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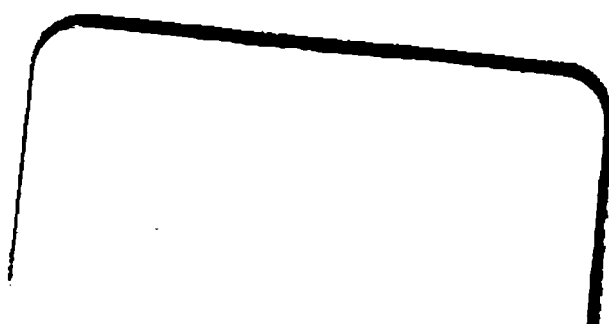
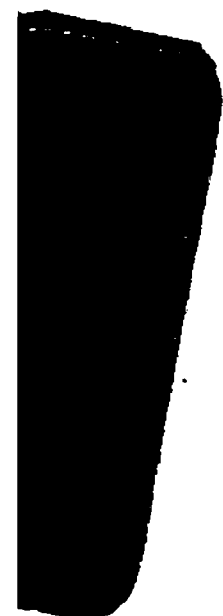
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ANNUAL REPORT

OF THE

COMMISSIONERS

OF

STATUTORY REVISION

OF THE

STATE OF ~~NEW~~ YORK.

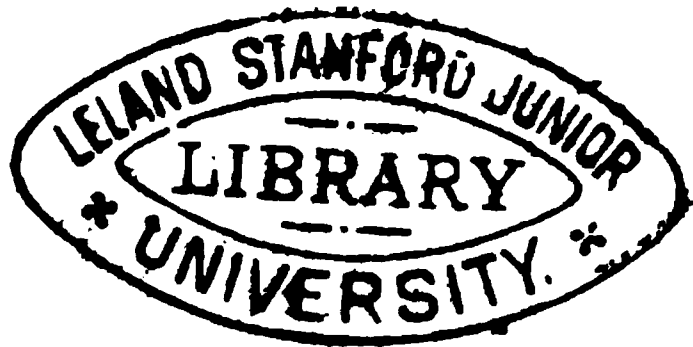
TRANSMITTED TO THE LEGISLATURE APRIL 21, 1896.

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STATE OF NEW YORK.

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IN ASSEMBLY,

APRIL 21, 1896.

REPORT

OF THE

COMMISSIONERS OF STATUTORY REVISION.

STATE OF NEW YORK:

ALBANY, *April* 20, 1896.

To the Legislature :

In accordance with chapter 289 of the Laws of 1889, and section 23 of the Legislative Law, we have the honor to present herewith the report of the Commissioners of Statutory Revision to the Legislature of 1896.

Respectfully yours,

CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON,
A. JUDD NORTHRUP.

Commissioners of Statutory Revision.

GENERAL NOTE.

This report contains the text of the several bills reported by the commission as finally amended by the Legislature. The notes at the end of the sections indicate changes made by the Legislature from the bills as originally introduced. The Tax Law, State Charities Law, Poor Law, Insanity Law, Domestic Commerce Law, Benevolent Orders Law, Real Property Law, Domestic Relations Law and the general repealing act were passed by the Legislature, approved by the Governor and became chapters of the law of 1896, as indicated at the beginning of each law. The State Finance Law passed the Senate, but reached the Assembly too late for consideration.

CHARLES Z. LINCOLN,

WILLIAM H. JOHNSON,

A. JUDD NORTHRUP,

Commissioners of Statutory Revision.

THE TAX LAW.

THE TAX LAW.

[This bill became ch. 908 of the Laws of 1896.]

REVISERS' NOTE EXPLANATORY OF THE TAX LAW.

The original law (L. 1889, ch. 289), creating a statutory revision commission, expressly provided, among other things, that the commission should prepare and report to the legislature a bill for the consolidation and revision of the general statutes of the state, relating to "the collection and assessment of taxes, and the exemption of property from taxation throughout the state." Accordingly the commissioners appointed pursuant to such law, prepared a consolidation and revision of the tax laws which, however, was never submitted to the legislature as a whole, either by report or bill. But in 1892, the commission assisted in the preparation of a bill revising the laws taxing the succession of property, which became chapter 399 of the laws of 1892, known as the taxable transfers act.

The supplemental supply bill of 1892 (chapter 660) provided for the appointment by the governor of two counsel to "examine the laws of this and other states relating to taxation, and to report to the next legislature before the first day of February, the result of their investigations, with recommendations as to legislation, relating to assessment and taxation in this state."

Messrs. Collin and Fiero were appointed as such counsel and reported to the legislature of 1893, a proposed revision of the tax laws, purporting to cover and supersede all existing statutes relating to taxation. The bill, as reported by the counsel, was introduced in the legislature, but no portion of it became a law, except that relating to sales by the comptroller and by county treasurers for unpaid taxes, which was enacted as chapter 711 of the laws of that year. No formal report was made by the counsel to the legislature of 1894, but chapter 768 of the laws of that year provided the compensation of such counsel for services rendered during the year 1893.

Mr. Fiero reported to the legislature of 1895, a revision of the tax laws, excepting the laws relating to the taxation of transfers of property, and the taxation of corporations. The bill proposed by him follows substantially the arrangement originally reported by the tax counsel, in pursuance of chapter 660 of the laws of 1892, but as stated in his report, he abandoned many changes thereto proposed by the counsel, "which were regarded as somewhat radical."

The revision as presented to the legislature of 1895, was introduced as a bill in the senate and referred to the committee on taxation and retrenchment, but was never reported from that committee.

While the matter of revision was under consideration by the tax counsel appointed in pursuance of the act of 1892, the statutory revision commission made no effort to revise the tax laws; but none of the proposed revisions having been accepted by the legislature, the commissioners now deem it proper and desirable to resume consideration of the subject and prepare a bill, in accordance with the general scheme of revision which the commission is expected to complete.

All the bills submitted to the legislature by the tax counsel follow the plan of the statutory revision commission for framing general laws; and each bill gives to the revision the chapter number which it should have in the general laws.

The present commissioners have carefully examined the original bill prepared by the former commission, as well as the several bills prepared by the tax counsel, and so far as practicable, have followed their general arrangement, but for the substance of this revision have gone over the entire field of statutory law relating to taxation.

The tax laws of the state are quite conflicting and confused and a revision is very desirable. In preparing the draft of the bill submitted herewith, the commission has tried to preserve, as far as possible, the substance of existing statutes, in order that the bill may not meet the objection that it effects radical changes.

Various changes, however, have been necessary to eliminate

inconsistencies and to reduce the subject to a harmonious and systematic whole. Several changes are proposed in those portions of the law relating to the sale of lands for nonpayment of taxes, taxable transfers and the taxation of corporations. In making these changes, the commission has been aided by valuable suggestions from the comptroller, whose office has jurisdiction of these subjects.

There are, of course, in addition, many changes in phraseology, which are necessary in the revision and re-writing of the law. All the changes of substance are indicated in the notes at the end of the sections, and it will be unnecessary to enumerate them here.

There has been no revision of the tax laws since the revised statutes of 1828, but the general scheme of taxation as then adopted has remained substantially unchanged, so far as the local assessment and collection of taxes are concerned. But since that time a large number of statutes relating to the subject of taxation have been passed, many of which conflict with, or supersede the provisions of the revised statutes, and can only be reconciled by a judicial decision.

Various other statutes have introduced into our law new schemes of taxation. Notably, the act of 1855 (chapter 427), providing for the sale by the comptroller of land of nonresidents for unpaid taxes; also the acts providing for an organization and franchise tax on corporations, and for the taxation of the succession of property on the death of the owner.

The exemptions of property from taxation have also been largely increased. The creation of a state board of assessors for the equalization of state taxes between the several counties and for hearing appeals from the equalization of boards of supervisors, is also a feature of the existing law which has grown up since the revised statutes. Altogether there are about one hundred acts supplemental to the revised statutes of 1828.

Many of the provisions of article II, entitled "procedure," seem more properly to come within the scope of a revision of the code of civil procedure, rather than a revision of the tax laws; but the

commission has deemed it desirable to re-enact them at this time as a portion of the tax law, in order that they may not be left on the statute books as fragmentary provisions of laws, the other portions of which are repealed by this bill. When the revision of the code of civil procedure is undertaken, the provisions of the article will be again considered and may be incorporated into the code, so far as practicable.

The table following the repealing schedule indicates this disposition, in the sections of the revision or otherwise, of each law repealed by this chapter. The page references at the end of the sections are to the eighth edition of the revised statutes.

Respectfully submitted,

CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON.
A. JUDD NORTHRUP.

THE TAX LAW.

AN ACT in relation to taxation, constituting chapter twenty-four of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XXIV OF THE GENERAL LAWS.

The Tax Law.

- Article 1. Taxable property and place of taxation. (§§ 1-14.)
2. Mode of assessment. (§§ 20-41.)
3. Equalization of assessment and levy of tax. (§§ 50-59.)
4. Collection of taxes. (§§ 70-94.)
5. Collection of nonresident taxes. (§§ 100-109.)
6. Sales by comptroller for unpaid taxes and redemption of lands. (§§ 120-143.)
7. Sales by county treasurers for unpaid taxes and redemption of lands. (§§ 150-158.)
8. State board of tax commissioners; state board of equalization. (§§ 170-177.)
9. Corporation tax. (§§ 180-203.)
10. Taxable transfers. (§§ 220-242.)
11. Procedure. (§§ 250-264.)
12. Laws repealed; when to take effect. (§§ 280-281.)

ARTICLE I.

Taxable Property and Place of Taxation.

- Section 1. Short title.
2. Definitions.
3. Property liable to taxation.
4. Exemption from taxation.
5. Taxation of lands leased or sold by the state.

Section 6. No deduction allowed for indebtedness fraudlently contracted.

7. When property of nonresidents is taxable.
8. Place of taxation of property of residents.
9. Place of taxation of real property.
10. Taxation of real property divided by line of tax district.
11. Place of taxation of property of corporations.
12. Taxation of corporate stock.
13. Stockholders of bank taxable on shares.
14. Place of taxation of individual bank capital.

§ 1. Short title.— This chapter shall be known as the tax law.

[New.]

§ 2. Definitions.— 1. "Tax district" as used in this chapter, means a political subdivision of the state having a board of assessors authorized to assess property therein for state and county taxes.

2. "County treasurer" includes any officer performing the duties devolving upon such officer under whatever name.

3. The terms "land," "real estate" and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or grounds; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity, or any

property, substance or product capable of transportation or conveyance therein or that is protected thereby; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state.

4. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

[R. S., pt. I, ch. 13, tit. I, §§ 2, 3; 8th ed., 1082,

L. 1851, ch. 371, § 1; R. S., 8th ed., 1084,

L. 1883, ch. 392; R. S., 8th ed., 1095.

The statutory construction law, § 18, defines "board" as including an individual. No change has been made in the definition of land. The definition of personal property has been somewhat amplified by the addition of "things in action," but the substantial provisions of the revised statutes have been retained.

The bill as first introduced made no substantial change in the definition of land. The legislature added the words "all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground," and also the words "for conducting steam, heat, water, oil, electricity or any property substance or product capable of transportation or conveyance therein or that is protected thereby." See note to § 34.]

§ 3. Property liable to taxation.—All real property within this state, and all personal property situated or owned within this state, is taxable unless exempt from taxation by law.

[R. S., pt. I, ch. 13, tit. I, § 8; 8th ed., 1082,

without change of substance.]

§ 4. Exemption from taxation.— The following property shall be exempt from taxation:

1. Property of the United States.

【R. S., pt. I, ch. 13, tit. I, § 4, subd. 2; 8th ed., 1083.】

2. Property of this state other than its wild or forest lands in the forest preserve.

【R. S., pt. I, ch. 13, tit. I, § 4, subd. 2; 8th ed., 1083.

See fisheries, game and forest law, § 274, as am. by L. 1895, ch. 395, providing for taxation of state lands in forest preserve.

The legislature substituted the words “ its wild or forest lands ” for the words “ real property of the state.”】

3. Property of a municipal corporation of the state held for a public use, except the portion of such property not within the corporation.

【R. S., pt. I, ch. 13, tit. I, § 4, subds. 3, 4; 8th ed., 1083,

R. S., pt. I, ch. 20, tit. I, § 72; 8th ed., 2120.

The term municipal corporation is defined by the general corporation law, § 3, as including “ a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.” This subdivision is intended to include the exemptions of the property of municipal corporations made by R. S., pt. I, ch. 13, tit. I, § 4, subds. 3, 4, which are as follows: “ Every school-house, court-house and jail used for either of such purposes; and the several lots whereon such buildings are situated and the furniture belonging to each of them, and every poorhouse, almshouse, house of industry, and the real and personal property used for such purposes belonging to or connected with the same.” The subdivision is further extended to include all the property of a municipal corporation in accordance with the decisions of the courts, that such property is not taxable. See *City of Rochester v. Town of Rush*, 80 N. Y. 302, holding that municipal water-works are not taxable. See, also, the *People, ex rel. Murphy, v. Kelly*, 76 N. Y. 479, 486-89, as to what constitutes a municipal purpose generally.

The legislature added the words “ except the portion of such property not within the corporation.”】

4. The lands in any Indian reservation owned by the Indian nation, tribe or band occupying them.

[Indian L., § 6 (L. 1892, ch. 679); R. S., 8th ed., supp. 3743.]

5. All property exempt by law from execution, other than an exempt homestead.

[R. S., pt. I, ch. 13, tit. I, § 4, subd. 9; 8th ed., 1083,
Code of Civil Procedure, § 1397.]

6. Bonds of a municipal corporation heretofore issued for the purpose of paying up or retiring the bonded indebtedness of such corporation.

[Gen. Mun. L. (L. 1892, ch. 685), § 7; R. S., 8th ed., supp. 3903.
The exemption of such bonds has not been extended to future issues.]

7. The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, and used exclusively for carrying out thereupon one or more of such purposes, and the personal property of any such corporation or association shall be exempt from taxation. But no such corporation or association shall be entitled to any such exemption if any officer, member or employe thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof, for any of such avowed purposes, be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employes, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to

such exemption held by it exclusively for one or more of such purposes, and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor, by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association. The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes, but leased or otherwise used for other purposes shall not be so exempt; but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more of such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining portion of such lot or building to the extent of the value of such remaining portion shall be subject to taxation. Property held by an officer of a religious denomination shall be entitled to the same exemptions subject to the same conditions and exceptions as property held by a religious corporation.

[R. S., pt. I, ch. 13, tit. I, § 4, subds. 3, 5, 6; 8th ed., 1083,
R. S., pt. I, ch. 13, tit. I, § 4, subd. 4, as amended by
L. 1892, ch. 713; 8th ed., supp., 3246,
L. 1847, ch. 133; R. S., 8th ed., 1937,
L. 1852, ch. 282; R. S., 8th ed., 1086,
L. 1866, ch. 273, § 5; R. S., 8th ed., 2058,
L. 1875, ch. 466; R. S., 8th ed., 1087, as amended by
L. 1889, ch. 462; R. S., 8th ed., supp., 3246,
L. 1879, ch. 203; R. S., 8th ed., 2444,
L. 1879, ch. 310; R. S., 8th ed., 1947,
L. 1882, ch. 326; R. S., 8th ed., 1582,
L. 1889, ch. 95, § 4; R. S., 8th ed., supp., 3353,
L. 1890, ch. 118, § 7; R. S., 8th ed., supp., 3415,
L. 1890, ch. 553; R. S., 8th ed., supp., 3358,
L. 1889, ch. 191; R. S., 8th ed., supp., 3358, as amended by
L. 1890, ch. 553,
L. 1893, ch. 498.]

8. Real property of an incorporated association of present or former volunteer firemen actually and exclusively used and occupied by such corporation and not exceeding in value fifteen thousand dollars.

[R. S., pt. I, ch. 13, tit. I, § 4, subd. 10, as added by L. 1891, ch. 163; 8th ed., supp., 3246, without change.]

9. All dwelling-houses and lots of religious corporations while actually used by the officiating clergymen thereof, but the total amount of such exemption to any one religious corporation shall not exceed two thousand dollars. Such exemption shall be in addition to that provided by subdivision seven of this section.

[R. S., pt. I, ch. 13, tit. I, § 4, subd. 11, as added by L. 1892, ch. 565; 8th ed., supp., 3246, without change of substance.

The last sentence was added by the legislature.]

10. The real property of an agricultural society permanently used by it for exhibition grounds.

[L. 1856, ch. 183; R. S., 8th ed., 1086, without change.]

11. The real property of a minister of the gospel or priest who is regularly engaged in performing his duties as such, or permanently disabled, by impaired health from the performance of such duties, or over seventy-five years of age, and the personal property of such minister or priest, but the total amount of such exemption on account of both real and personal property shall not exceed fifteen hundred dollars.

[R. S., pt. I, ch. 13, tit. I, § 4, subd. 8; 8th ed., 1083, R. S., pt. I, ch. 13, tit. I, § 5; 8th ed., 1083, without change of substance.

The legislature struck out the words after the word "age" as follows: "When occupied as a home by such minister or priest."]

12. All vessels registered at any port in this state and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the state of New York, engaged in ocean commerce between any port in the United States, and any foreign port, are exempted from all taxation in this state, for state and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this state, for state and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two.

[L. 1881, ch. 433; R. S., 8th ed., 1088, as am. by L. 1892, ch. 661, § 2; R. S., 8th ed., supp., 3247, without change, except that the period of exemption is extended from May 17, 1922, to Dec. 31, 1922.]

13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this state, sent to or deposited in this state for collection; the products of another state, owned by a nonresident of this state and consigned to his agent in this state for sale on commission for the benefit of the owner; moneys of a nonresident of this state, under the control or in the possession of his agent in this state, when transmitted to such agent for the purpose of investment or otherwise.

[R. S., pt. I, ch. 13, tit. II, § 5, 8th ed., 1094, R. S., pt. I, ch. 13, tit. V, § 3; 8th ed., 1160, re-enacted in part, without change of substance. See *Williams v. Supervisors of Wayne*, 78 N. Y., 561.]

14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable to taxation; and the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person.

[L. 1857, ch. 456, § 4; R. S., 8th ed., 1087, Banking L. (L. 1892, ch. 689), § 191; R. S., 8th ed., supp., 4185, without change in substance.]

15. Moneys collected in the course of the business of any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, and which are to be used for the payment of assessments, or for death losses or for benefits to disabled members.

[L. 1884, ch. 353, § 1; R. S., 8th ed., 1711,
without change of substance.]

16. The owner or holder of stock in an incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.

[R. S., pt. I, ch. 13, tit. I, § 7; 8th ed., 1084,
without change of substance.]

17. The personal property in excess of one hundred thousand dollars of a mutual life insurance corporation incorporated in this state before April tenth, eighteen hundred and forty-nine.

[L. 1853, ch. 469; R. S., 8th ed., 1677,
L. 1855, ch. 83; R. S., 8th ed., 1677,
without change of substance.]

§ 5. Taxation of lands sold or leased by the state.—All lands which have been sold by the state, although not conveyed, shall be assessed in the same manner as if such purchaser were the actual owner. Where land is leased by the state such leasehold interest shall be assessed to the lessee or occupant in the tax district where the land is situated.

[R. S., pt. I, ch. 13, tit. I, § 6; 8th ed., 1084,
The last sentence taxing leasehold interests is new.]

§ 6. No deduction allowed for indebtedness fraudulently contracted.—No deduction shall be allowed in the assessment of personal property by reason of the indebtedness of the owner contracted or incurred in the purchase of nontaxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser

or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.

[L. 1885, ch. 411, § 4; R. S., 8th ed., 1101, as am. by
L. 1892, ch. 202, § 1; R. S., 8th ed., supp., 3250,
L. 1885, ch. 411, § 4; R. S., 8th ed., 1101, as am. by
L. 1892, ch. 202, § 2; R. S., 8th ed., supp., 3251,
without change of substance.]

§ 7. When property of nonresidents is taxable.—Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state.

[L. 1853, ch. 469; R. S., 8th ed., 1677,
L. 1855, ch. 83; R. S., 8th ed., 1677.]

§ 8. Place of taxation of property of residents.—Every person shall be taxed in the tax district where he resides when the assessment for taxation is made, for all personal property owned by him, or under his control as agent, trustee, guardian, executor or administrator.

Where taxable personal property is in the possession or under the control of two or more agents, trustees, guardians, executors or administrators residing in different tax districts, each shall be taxed for an equal portion of the value of such property so held by them.

Rents reserved in any lease in fee or for one or more lives or for a term more than twenty-one years and chargeable upon real property within the state, shall be taxable to the person entitled to receive the same, as personal property in the tax district where such real property is situated, and for the purpose of the taxation thereof such person is to be deemed a resident of such tax district.

When a person shall have acquired a residence in a tax district, and shall have been taxed therein, such residence shall be presumed to continue for the purpose of taxation until he shall have

acquired another residence in this state or shall have removed from this state. The residence of a person on July first shall be deemed his residence for the purpose of assessment and taxation during that year. If he shall have actually and in good faith changed his residence after July first, and before August first in any year, from one tax district to another, and shall make proof to the assessors at or before their last meeting for the correction of the assessment-roll of such change of residence and that he is assessed in the tax district to which he has removed, his name and the assessment of his personal property shall be stricken from the assessment-roll of the tax district where he resided on July first. In case of any controversy as to the proper place of taxation within the state of any person, his residence for purposes of taxation may be determined by the state board of tax commissioners, subject to review by the court.

[R. S., pt. I, ch. 13, tit. II, §§ 1, 5; 8th ed., 1094,

L. 1846, ch. 327, §§ 1, 2; R. S., 8th ed., 1106,

L. 1858, ch. 357; R. S., 8th ed., 1108

L. 1883, ch. 392, § 2; R. S., 8th ed., 1096.

The latter part of the section fixing the residence of July first as the residence of the year for taxing purposes is new, as an express statutory revision.]

§ 9. Place of taxation of real property.—When real property is owned by a resident of a tax district in which it is situated, it shall be assessed to him. When real property is owned by a resident outside the tax district where it is situated, it shall be assessed as follows:

1. When the property is occupied it must be assessed to the occupant.

2. If the occupant resides out of the tax district or if the land is unoccupied, it shall be assessed as nonresident, as herein-after provided by article two.

[R. S., pt. I, ch. 13, tit. II, §§ 1-3; 8th ed., 1094.]

§ 10. Taxation of real property divided by line of tax district.—If a farm or lot is divided by a line between two or more tax

districts, it shall be assessed to the owner in the district in which he resides. If the owner is not a resident of either district, it shall be assessed to the occupant in the district in which he resides. If the land is unoccupied and the owner does not reside in either district, the portion of such farm or lot lying in each district shall be separately assessed therein. If there are several owners of such a farm or lot residing in different districts each containing a part thereof, a majority of them may elect in which district it shall be assessed by serving a written notice thereof on the assessors of each district during the month of May, but if such owners do not make such election, the property shall be assessed in the tax districts in which it is located.

If the boundary line of a tax district passes through a building any portion of which is used as a dwelling, the owner of such building, if occupying the same or residing in either tax district, and otherwise, the person occupying such building as a dwelling house, may elect in which district such building and the adjacent land, owned, occupied and connected therewith, shall be assessed, by serving a written notice of such election on the assessors of each tax district during the month of May; but if such election is not made, the property shall be assessed in the tax districts in which it is located.

[R. S., pt. I, ch. 13, tit. II, § 4 ; R. S., 8th ed., 1094,
L. 1883, ch. 342 ; R. S., 8th ed., 1095.

The original law provides that where a tax district line divides an occupied farm or lot, it shall be taxed in the district where the occupant resides. This section changes the rule and taxes the land to the owner if he resides in either district. L. 1883, ch. 342, provides that where a dwelling house is divided by a tax district line, the occupant may elect in which district the land shall be taxed. This section allows the owner to elect, if he resides in either district.

The legislature added the clause at the end of each paragraph, providing that if the election is not made, the property shall be assessed in the tax district where located.]

§ 11. Place of taxation of property of corporations. — The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected ; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

[R. S., pt. I, ch. 13, tit. II, § 6 ; 8th ed., 1094,
without change.]

§ 12. Taxation of corporate stock.—The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value.

[L. 1857, ch. 456, § 3 ; R. S., 8th ed., 1086,
without change.]

§ 13. Stockholders of bank taxable on shares. — The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein ; said

shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

[L. 1882, ch. 409, pt. of § 312 ; R. S., 8th ed., 1580, without change. See Revised Statutes of United States, § 5219. The consolidated school law, tit. VII, § 63, provides for the assessment of school taxes on banks.]

§ 14. Place of taxation of individual bank capital.— Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district.

[L. 1882, ch. 409, § 320 ; R. S., 8th ed., 1581, without change in substance.]

ARTICLE II.

Mode of Assessment.

Section 20. Ascertaining facts for assessment.

21. Preparation of assessment-roll.

22. Assessment of state lands in forest preserve.

23. Banks to make report.

24. Bank shares. how assessed.

25. Individual banker, how assessed.

26. Notice of assessment to bank or banking association.

27. Reports of corporations.

28. Penalty for omission to make statement.

29. Assessment of real property of nonresident.

30. Surveys and maps of nonresident real property.

31. Corporations, how assessed.

32. Assessment of agent, trustee, guardian or executor.

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34. Debts owing to nonresidents of United States, how assessed.

Section 35. Notice of completion of assessment-roll.

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38. Filing of roll and notice thereof.

39. Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies between school districts.

40. Neglect or omission of duty by assessors.

41. Abandonment of lot divisions.

§ 20. Ascertaining facts for assessment.—The assessors in each tax district may, by mutual agreement, divide it into convenient assessment districts not exceeding the number of such assessors. The assessors in each tax district shall annually, between May first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein.

[R. S., pt. I, ch. 13, tit. II, § 718 ; 8th ed., 1096,
without change.]

§ 21. Preparation of assessment-roll.—They shall prepare an assessment-roll containing five separate columns, and shall, according to the best information in their power, set down:

1. In the first column the names of all taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person, with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents, and if payable in any other thing except money, the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the

rent assessed can not be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

[R. S., pt. I, ch. 13, tit. II, §§ 9, 17; 8th ed., 1096, as amended by L. 1892, ch. 202, § 1; 8th ed., supp., 3250, L. 1885, ch. 411, § 4; R. S., 8th ed., 1101, as amended by L. 1892, ch. 202, § 2; R. S., 8th ed., supp., 3251, L. 1846, ch. 327, § 1; R. S., 8th ed., 1106.

No change is effected by this section.

Subdivision 5 is from L. 1846, ch. 327, § 1. Section 8 of this chapter prescribes what rents are taxable, following L. 1846, ch. 327, § 1, without change.]

§ 22. Assessment of state lands in forest preserve.—All wild or forest lands within the forest preserve shall be assessed and taxed at a like valuation and rate as similar lands of individuals within the counties where situated. On or before August first in every year the assessors of the town within which the lands so belonging to the state are situated shall file in the office of the comptroller and of the board of fisheries, game and forest, a copy of the assessment-roll of the town, which, in addition to the other matter now required by law, shall state and specify which and how much, if any, of the lands assessed are forest lands, and which and how much, if any, are lands belonging to the state; such statements and specifications to be verified by the oaths of a majority of the assessors. The comptroller shall thereupon and before the first day of September following, and after hearing the assessors and the board of fisheries, game and forest, if they or any of them so desire, correct or reduce any assessment of state lands which may be in his judgment an unfair proportion to the remaining assessment of land within the town, and shall in other respects approve the assessment and communicate such approval to the assessors. No such assessment of state lands shall be valid for any purpose until the amount of assessment is approved by the comptroller, and such approval attached to and deposited with the assessment-roll of the town, and therewith

delivered by the assessors of the town to the supervisor thereof or other officer authorized to receive the same from the assessors. No tax for the erection of a schoolhouse or opening of a road shall be imposed on the state lands unless such erection or opening shall have first been approved in writing by the board of fisheries, game and forest.

【Fisheries, game and forest law, § 274, as amended by
L. 1895, ch. 395,
without change of substance.】

§ 23. Banks to make report.—The chief fiscal officer of every bank or banking association, organized under the authority of this state or of the United States, shall, on or before the first day of July, furnish the assessors of the tax district in which its principal office is located, and also the state board of tax commissioners, a statement, under oath, of the condition of such bank or banking association, on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year, the capital employed by it during the year, the amount of its surplus, if any, the amount, value and location of its real estate, a complete list of the names and residences of its stockholders, and the number of shares held by each, and such other data, information or matters as may be prescribed by the state board of tax commissioners, who shall furnish blanks upon which such reports shall be made, and prescribe the form of verification thereto, and such commissioners may, at any time, require a further and fuller report. In case of neglect or refusal on the part of any bank, corporation or association to report, as herein prescribed, or to make other or further reports as may be required by the commissioners of taxes, such bank, corporation or association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the state board of tax commissioners. There

shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all the stockholders therein and of the number of shares held by each, and such list shall be subject to the inspection of the assessors and the board of commissioners of taxes at all times. The list of stockholders furnished by such bank, corporation or association shall be deemed to contain the names of the owners of such shares as are set opposite them respectively, for the purposes of assessment and taxation.

[L. 1882, ch. 409, § 313; R. S., 8th ed., 1580, as am. by
L. 1892, ch. 714, § 1; R. S., 8th ed., 3285.]

Section 23 fully covers the provisions of § 313. The requirement of a report is made mandatory throughout the state, whereas § 313 only requires a report, on request, except in New York. This section authorizes the assessors to require a further report at any time, in addition to the report as of the first of June. The date of making the report is changed from June first to July first. The penalty for failure to make report is new. The board of tax commissioners is given broader power than is now possessed by the state assessors.]

§ 24. Bank shares, how assessed.—In assessing the shares of stock of banks or banking associations, organized under the authority of this state or the United States, each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable property owned by individual citizens of this state, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. In making such assessment, there shall also be deducted from the value of such shares a sum which bears the same proportion to such value as the assessed value of the real property of such bank or banking association bears to the capital stock thereof. This is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

[L. 1882, ch. 409, § 312; R. S., 8th ed., 1580,
re-enacted in part without change.]

§ 25. Individual banker, how assessed.— Every individual banker doing business under the laws of this state, must report before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking business is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding. Such capital shall be assessed as personal property to the banker in whose name such business is carried on.

[L. 1882, ch. 409, § 320; R. S., 8th ed., 1581, without substantial change except that the date of making the report is changed from June 1 to June 15, and of the condition of business on June 1, instead of May 1.]

§ 26. Notice of assessment to bank or banking association.— The assessors of every tax district shall within ten days after they have completed the assessment of the stock of a bank or banking association, give written notice to such bank or banking association of such assessment of the shares of its respective shareholders and no personal or other notice to such shareholders of such assessment is required.

[L. 1882, ch. 409, § 312; R. S., 8th ed., 1580, re-enacted in part without change.]

§ 27. Reports of corporations.— The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the controller of the state, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

[R. S., pt. I, ch. 13, tit. IV, §§ 1-3; 8th ed., 1149,

The date of making the report is changed from July 1, to June 15.

From sub. 3 is omitted the statement of the tax district in which it is liable to be taxed, for § 11 of the chapter provides if the corporation has no principal office, it is liable to be taxed in the district in which the operations of the company are carried on.

The legislature added the words in the first paragraph "if such tax district is in a county embracing a portion of the forest preserve," and also the words in the first subdivision "unless a railroad corporation." The legislature also added the last sentence, providing for mandamus.]

§ 28. Penalty for omission to make statement.—In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this state for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not willful, may, in his discretion, discontinue such suit.

[R. S., pt. I, ch. 13, tit. IV, §§ 4-5; 8th ed., 1150, without change.]

§ 29. Assessment of real property of nonresident.— The real property of nonresidents of the tax districts, shall be designated in a separate part of the assessment-roll and if it be a tract subdivided into lots or parts of a tract so subdivided, the assessors shall:

1. Designate it by its name, if known by one, or if not distinguished by a name or the name is unknown, state by what lands it is bounded.

2. Place in the first column the numbers of all unoccupied lots of any subdivided tract, without the names of the owner, beginning at the lowest number and proceeding in numerical order to the highest, but the entry of the name of the owner shall not affect the validity of the assessment.

3. In the second column and opposite the number of each lot, the quantity of land therein.

4. In the third column and opposite the quantity, the full value thereof.

5. If it be a part of a lot, the part must be distinguished by boundaries or in some other way by which it may be identified.

If any such real property be a tract not subdivided or whose subdivisions can not be ascertained by the assessors, they shall certify in the roll that such tract is not subdivided, or that they can not obtain correct information of the subdivisions and shall set down in the proper column the quantity and valuation as herein directed. If the quantity to be assessed is a part only of a tract, that part, or the part not liable must be particularly described.

[R. S., pt. I, ch. 13, tit. II, §§ 11, 12; 8th ed., 1097, as am. by L. 1890, ch. 174; R. S., 8th ed., supp. 3250,
R. S., pt. I, ch. 13, tit. II, § 13, subds. 1-3; 8th ed., 1097,
re-enacted without change of substance.]

§ 30. Surveys and maps of nonresident real property.—If the assessors shall deem it necessary to have an actual survey made, to ascertain the quantity of any lot or tract of nonresident real property divided by a town line, they shall notify the supervisor,

who shall cause the necessary surveys to be made at the expense of the town. If a part only of a tract of real property is liable to taxation as nonresident and the assessors can not otherwise designate such part, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made for the purpose of ascertaining the situation and quantity of such part. One of such maps shall be delivered to the county treasurer and by him to be transmitted to the comptroller in case the county in which the land is situated embraces a part of the forest preserve; and in other counties it shall be retained by him. The other map shall be delivered to the assessors, who shall then complete the assessment of the tract and deposit the map in the town clerk's office for the information of future assessors. The expense of making such survey shall be immediately repaid to the supervisor out of the county treasury and added by the board of supervisors to the tax on such tract, distinguishing it from the ordinary tax.

[R. S., pt. I, ch. 13, tit. II, § 13, subds. 4-6, § 14; 8th ed., 1098, without change of substance, except that the survey and map are only required to be sent to comptroller from counties in the forest preserve, as it is in those counties only that the comptroller collects the nonresident unpaid taxes. In the remainder of the state such taxes are collected by the county treasurer.]

§ 31. Corporations, how assessed.—The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment-rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in and of all of such surplus profits or reserve funds as aforesaid after deducting the sums paid out for all the real estate of the company wherever the same may be situated and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

【R. S., pt. I, ch. 13, tit. IV, § 6; 8th ed., 1150, without change in substance.】

§ 32. Assessment of agent, trustee, guardian or executor.— If a person holds taxable property as agent, trustee, guardian, executor or administrator, he shall be assessed therefor as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment.

【R. S., pt. I, ch. 13, tit. II, § 10; 8th ed., 1097, without change of substance, except that “agent” is added.】

§ 33. Assessment of omitted property.— The assessors of any tax district shall, upon their own motion, or upon the application of any taxpayer therein, enter in the assessment-roll of the current year any property shown to have been omitted from the assessment-roll of the preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessors shall determine for the preceding year, and such valuation shall be stated in a separate line from the valuation of the current year.

【L. 1865, ch. 453, § 1; R. S., 8th ed., 1111.

The original law provides that the omitted property shall be assessed on the application of three taxpayers. This section authorizes the assessors to make the assessment on their own motion or on the application of one taxpayer. Otherwise there is no change of substance.】

§ 34. Debts owing to nonresidents of the United States, how assessed.— Every agent in any county of a nonresident creditor having debts owing to him, taxable in any county of the state, shall annually, on or before June first, furnish to the county treasurer of the county where the debtor resides, a true and accurate statement verified by his oath, of such debts owing on the first day of May next preceding in each town or ward in such county. The county treasurer shall, immediately upon the receipt of such statement, make out and transmit to the assessors of every tax district in the county in which any such debtor resides, a copy of so much of such statement as relates to the tax district of such assessors, with the name of the creditor. The assessors on receipt of such statement from the county treasurer shall, within the time in which they are required to complete the assessment-roll, enter therein the name of such nonresident creditor, and the aggregate amount due him in such tax district on the first day of May next preceding, in the same manner as other personal property is entered on the roll, adding the name of the debtor owing such debt.

Any agent neglecting or refusing without good cause to furnish such statement to the county treasurer shall forfeit to the county in which the debtor resides the sum of five hundred dollars, recoverable by the district attorney, if the existence of such debts was known to the agent.

[L. 1851, ch. 371, § 2-5; R. S., 8th ed., 1084,

without change of substance, except that the date for rendering the statement is changed from July twenty-fifth to June first.

The act from which this section is derived (L. 1851, ch. 371), makes debts due to nonresidents of the United States for the purchase of real property, taxable as personal property within the state. The act would seem to raise a serious question as to the jurisdiction of the state to assess nontangible personal property, where the owner thereof resides without the state. There appears, however, to have been no authoritative decision of the courts of this state as to the power of the legislature to pass the law.

Cooley lays down the rule broadly that "Debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor cannot be taxed, because he is not within the jurisdiction, and the debts can not be taxed in the debtors' hands, through any fiction of the law, which is to treat them as being for this purpose, the property of the debtor." (Cooley, on taxes, p. 22.)

The leading case upon the subject is reported in 15 Wall., 300, in which an attempt was made to tax in the state of Pennsylvania the bonds of a Pennsylvania railroad company, secured by mortgage, and held by nonresidents of the state. The supreme court of the United States laid down the rule unequivocally that credits of that sort were not within the jurisdiction of the state, so as to render them subject to taxation; and again in *Kirkland v. Hotchkiss*, 100 United States, 491, the supreme court laid down the reverse proposition "that a debt for the purpose of taxation is situated at the domicile of the creditor, although secured by mortgage upon real estate situated in another state."

The supreme court of Ohio, in *Myers v. Seaberger*, 45 Ohio st., 232; held "that a loan of money secured by mortgage on real estate is a credit within the meaning of the statutes of this state, providing for taxation of property, and that where the creditor resides in another state, is not subject to taxation in this, although the securities are in the hands of an agent here who collects interest."

The state of Michigan has a law, however, which provides for the taxation of mortgages upon real property within the state, wherever and by whomever held. The supreme court of the state in *Common Council v. Assessors*, 91 Michigan, 78 (1892), upheld the law upon the argument that the interest of the mortgagee was a tangible interest within the state, enjoying the protection of the laws of the state. The court attempts to distinguish the decision of the supreme court of the United States in 15 Wallace, on the ground that that case referred to the taxation of credits generally and not to an interest which the state could tax as real property within its jurisdiction.

The law of 1851 has stood upon the statute books for so many years, apparently never having been seriously questioned, that the commissioners have deemed it best to include it within their revision, leaving to the legislature the responsibility of repealing it without re-enactment, if such a course is deemed desirable.]

§ 35. Notice of completion of assessment-roll.—The assessors shall complete the assessment-roll on or before the first day of August, and make out one copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places in the tax district, stating that they have completed the assessment-roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments. In any city the notice shall conform to the requirements of the law regulating the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit it to the inspection of every person applying for that purpose.

[R. S., pt. I, ch. 13, tit. II, §§ 19-21; 8th, ed., 1098, without change of substance.]

§ 36. Hearing of complaints. — The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time. Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which verification must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein. The assessors may administer oaths, take testimony and hear proofs in regard to any such complaint

and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his residence for the purpose of taxation. If any such person, or his agent or representative, shall willfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments. Minutes of the examination of every person examined by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk. The assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof.

[R. S., pt. I, ch. 13, tit. II, § 20 ; 8th ed., 1098,

L. 1857, ch. 176, §§ 6, 7 ; R. S., 8th ed., 1100.

The provision that the complaint shall be in writing and filed with the assessors is new. L. 1857, ch. 176, § 6, requires the examination to be subscribed by witness and filed in town clerk's office, while § 36 merely requires the minutes of the testimony to be so filed. Otherwise there is no change of substance.]

§ 37. Correction and verification of tax-roll. — When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before any officer of their county, authorized by law to administer oaths, and shall severally make and subscribe before such officer an oath in the following form : “ We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are assessors, according to our best information ; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof ; and, also, that

the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.

[L. 1851, ch. 176, § 8, R. S., 8th ed., 1100, without change of substance, except that the provision of § 8, that a false oath is perjury, is omitted as being fully covered by § 96 of the penal code.]

§ 38. Filing of roll and notice thereof.—The assessment-roll when thus completed and verified shall be filed on or before September first, in the office of the town or city clerk, there to remain for fifteen days for public inspection. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the town or city, that such assessment-roll has been finally completed and stating that it has been so filed and will be there open to public inspection. At the expiration of such fifteen days, the town or city clerk shall deliver such roll to a supervisor of the tax district embraced therein.

[R. S., pt. I, ch. 13, tit. II, § 27 ; 8th ed., 1099; L. 1880, ch. 269, § 9 ; R. S., 8th ed., 1115, without change of substance.]

§ 39. Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies between school districts. — The assessors of each town in which a railroad, telegraph, telephone or pipe line company is assessed upon property lying in more than one school district therein, shall, within fifteen days after the final completion of the roll, apportion the assessed valua-

tion of the property of each of such corporations among such school districts. Such apportionment shall be signed by the assessors or a majority of them, and be filed with the town clerk within five days thereafter, and thereupon the valuation so fixed shall become the valuation of such property in such school district for the purpose of taxation. In case of failure of the assessors to act, the supervisor of the town shall make such apportionment on request of either the trustees of any school district or of the corporation assessed. The town clerk shall furnish the trustees a certified statement of the valuations apportioned to their respective districts. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year.

[L. 1867, ch. 694, §§ 1-5 ; R. S., 8th ed., 1326,
without change of substance.]

§ 40. Neglect or omission of duty by assessors.—The assessors, in the execution of their duties, shall use the forms and follow the instructions transmitted to them, from time to time, by the commissioners of taxes. If any assessor shall neglect or omit to perform any duty, the other assessors shall perform such duty and shall certify upon the assessment-roll the name of the delinquent assessor, stating therein the cause of such omission, and the assessment-roll, when otherwise made and completed in accordance with the requirements of this article, shall be deemed to be the assessment-roll of all the assessors. If the assessors shall neglect to meet for the purpose of hearing grievances, any person aggrieved by the assessment may appeal to the board of supervisors at its next meeting, which shall have the same power to review and correct such assessment as the assessors have under this article. If any assessor shall refuse or neglect to perform any duty or do any act required of him by this article, he shall forfeit to the county the sum of fifty dollars, to be recovered by the district attorney.

[R. S., pt. I, ch. 13, tit. II, §§ 28-30, 8th ed., 1099, L. 1851, ch. 176, § 5; R. S., 8th ed., 1099, re-enacted without change of substance, except that the separate penalty of \$20 for failure to hold meeting, recoverable for the poor, is omitted, as being amply provided for by the general penalty in the last sentence of § 40. By L. 1851, ch. 176, § 5, the penalty goes to the people of the state instead of to the county.]

§ 41. Abandonment of lot divisions.—Whenever more than ten years shall have elapsed after the subdivision of any tract of land into lots, plots or sites, with or without proposed streets, the owner of such tract, or of any part thereof composed of two or more contiguous lots may, by an instrument in writing, duly executed and acknowledged and describing such land, disclaim and abandon such subdivision including any streets not opened, accepted or used by the public and which are not necessary for the use of an owner or occupant of any part of said tract; and thereupon such subdivision, as to the lands described in such instrument, shall be deemed abandoned and of no effect; and thereafter the lands described therein shall, for the purpose of taxation, be regarded as a single tract. If a map of such subdivision has been filed in the office of the county clerk or register of deeds, such instrument may be recorded in said office, and a notice of such record shall thereupon be indorsed by the clerk or register upon such map. This section shall not apply to a county embracing a portion of the forest preserve.

[Substitute for L. 1894, ch. 713.

The legislature added the last sentence.]

ARTICLE III.

Equalization of Assessment and Levy of Tax.

Section 50. Equalization by board of supervisors.

51. Description of real property of nonresidents.

52. Review of assessments against nonresident owners of rents reserved.

Section 53. Correction of errors by board of supervisors.

54. Reassessment of property illegally assessed.

55. Levy of tax by supervisors.

56. Tax-roll and collector's warrant.

57. Statement of taxes upon certain corporations by clerk of supervisors.

58. Statement of valuation to be furnished to comptroller.

59. Abstract of warrant to be furnished county treasurer.

§ 50. Equalization by board of supervisors.—The board of supervisors of each county in this state, at its annual meeting, shall examine the assessment-rolls of the several tax districts in the county, for the purpose of ascertaining whether the valuations in one tax district bear a just relation to the valuations in all the tax districts in the county; and the board may increase or diminish the aggregate valuations of real estate in any tax district, by adding or deducting such sum upon the hundred, as may, in its opinion, be necessary to produce a just relation between all the valuations of real estate in the county; but it shall, in no instance, change the aggregate valuations of all the tax districts from the aggregate valuation thereof as made by the assessors.

[R. S., pt. 1, ch. 13, tit. 2, § 31; 8th ed., 1104,
without change.]

§ 51. Description of real property of nonresidents.—The board of supervisors of each county, at its annual meeting, shall examine the assessment-rolls of the several tax districts, and shall make such changes in the descriptions of the real property of nonresidents as may be necessary to render such descriptions sufficiently definite for the purposes of collection of taxes by sale thereof. If a sufficiently definite description can not be obtained during the session, the board shall cause the same to be obtained for the next annual session, and the property shall not be taxed until such description is obtained, and shall then be

taxed for the year so omitted, in the manner provided for taxing omitted lands.

[R. S., pt. I, ch. 13, tit. II, § 32; 8th ed., 1104, amplified but not changed in substance. Section 33 of revision provides for the taxing of omitted lands.]

§ 52. Review of assessments against nonresident owners of rents reserved.—If an assessment of taxable rents shall have been made against any person in any tax district of which he is not an actual resident, the board of supervisors of the county shall have the same power and authority in all respects, and it shall be its duty to correct such assessments as to the valuation of such rents and as to the gross amount for which such persons shall be assessed therefor, as the assessors of a tax district have as to the assessment of personal property of an actual resident of such tax district. The board may reduce the amount of any such assessment, if necessary, to make such assessment just when compared with the other assessments of property upon such roll.

[L. 1858, ch. 357; R. S., 8th ed., 1108, without change of substance.]

§ 53. Correction of errors by board of supervisors.—If it shall be made to appear to the board of supervisors of any county, upon the verified petition of the assessors of any tax district;

1. That any property taxable therein has, by any mistake in transcribing or copying the assessment-roll of the preceding year, been placed on the assessment-roll delivered to the supervisor, at a valuation less than actually appearing upon the original roll signed by the assessors, such board shall insert in the assessment-roll of the current year an assessment of the property upon the valuation equal to the difference between the actual valuation made by the assessors and the amount at which, by such mistake, the property was placed upon the roll of the preceding year, and tax the same at the rate per centum imposed upon property in such tax district in the year in which the mistake occurred.

2. That any taxable property therein has been omitted from the assessment-roll of the preceding year, such board shall place the same on the roll of the current year at its valuation for the preceding year, to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the preceding year.

3. That taxable property has been omitted from the assessment-roll, for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the current year.

A copy of the petition under the second or third subdivision of this section, with a notice of the presentation thereof to the board of supervisors, shall be served personally on the person alleged to be liable to taxation for the land omitted from the assessment-roll, at least ten days before the meeting of the board of supervisors; and the board of supervisors shall take no action on such petition, unless proof of the personal service of such petition and notice be made to them by affidavit. The board of supervisors shall give to the person alleged to be liable to taxation for such omitted land, an opportunity to be heard, and on such hearing and review the board of supervisors shall have, as to such omitted property all the powers of the assessors of a tax district in reviewing and correcting the assessment-roll.

The whole amount of tax levied upon land or property omitted in the tax levy of the preceding year shall be deducted from the aggregate of taxation to be levied on the tax district for the current year before such tax is levied.

[L. 1865, ch. 453, §§ 2-4; R. S., 8th ed., 1111.

The paragraph requiring notice to be served on the person alleged to be taxable and giving him opportunity to be heard by board is new.]

§ 54. Reassessment of property illegally assessed.— Whenever by the final judgment of a court of competent jurisdiction, it appears to the board of supervisors that any property liable to taxation in any year was erroneously or illegally assessed, and

that by reason of such erroneous or illegal assessment, such property did not become subject to taxation for such year, the board shall place the same on the roll of the current year at the valuation thereof, if any, fixed by the assessors for such preceding year; and in case no valuation was fixed by the assessors, such property shall be assessed by the board at such valuation as they may determine for the preceding year. Before fixing such valuation, the board of supervisors shall give to the owners of such property, at the time of the assessment by the board, a notice of at least five days and an opportunity to be heard, and on such hearing, the board shall have, as to such property, all the powers of the assessors of a tax district in reviewing and correcting an assessment-roll. Such property shall be taxed at the rate per centum of such preceding year. The whole amount of tax on property levied in pursuance of this section shall be deducted from the aggregate of taxation to be levied on the tax district for the current year, before such tax is levied.

[R. S., pt. I, ch. 13, tit. II, §§ 33-35; 8th ed., 1104,
R. S., pt. I, ch. 13, tit. IV, § 15; 8th ed., 1150,
L. 1846, ch. 327, § 2; R. S., 8th ed., 1106,
L. 1859, ch. 312, § 9; R. S., 8th ed., 1109,
without change of substance.]

§ 55. Levy of tax by supervisors.—The board of supervisors of each county shall, at its annual meeting, levy the taxes for the county, including the state tax, upon the valuations as equalized by it and estimate and set down in a separate column in the assessment-roll of each tax district therein, opposite to the sums set down as the valuation of real and personal property or property of incorporated companies or of the taxable rents reserved, the sum to be paid as a tax thereon, including the state tax, as fixed by the comptroller. Such assessment-roll shall, when the warrant is annexed thereto, become the tax-roll of the tax district, and a copy thereof shall be delivered to the proper supervisor, who shall deliver it to the clerk of the proper city or town to be kept by him for its use.

[New.]

§ 56. Tax-roll and collector's warrant.—On or before December fifteenth, in each year, the board of supervisors shall annex to the tax-roll a warrant under the seal of the county, signed by the chairman and clerk of the board, commanding the collector of each tax district, to whom the same is directed, to collect from the several persons named in such roll the several sums mentioned in the last column thereof opposite their respective names, on or before the first day of the following February, and further commanding him to pay over on or before that date, all moneys so collected, appearing on said roll, to the treasurer of the county, if he be a collector of a city or a division thereof, or if he be a collector of a town:

1. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein.

2. To the overseers of the poor of the town, such sum as shall have been levied, to be expended by such overseers for the support of the poor therein.

3. To the supervisor of the town, all of the moneys levied therein, to defray any other town expenses or charges.

4. To the treasurer of the county, the residue of the money so to be collected.

If the law shall direct the taxes levied for any local or special purpose in a city or town, to be paid to any person or officer other than those named in this section, the warrant shall be varied so as to conform to such direction. The warrant shall authorize the collector to levy such taxes by distress and sale, in case of non-payment. The corrected assessment-roll, or a fair copy thereof, shall be delivered by the board of supervisors to the collector of the tax district on or before December fifteenth, in each year.

[R. S., pt. I, ch. 13, tit. II, §§ 36, 37, 39; 8th. ed., 1105, without change of substance, except that the chairman and clerk sign the warrant instead of the supervisors, or a majority of them. This is deemed more convenient.]

§ 57. Statement of taxes upon certain corporations by clerk of supervisors.—The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county

treasurer, a statement showing the names, valuation of property and the amount of tax of every railroad, corporation and telegraph, telephone and electric-light line in each tax district in the county, and on refusal or neglect so to do, shall forfeit to the county the sum of one hundred dollars, to be sued for by the district attorney in the name of the county.

【County L. (L. 1892, ch. 686), § 53; R. S., 8th. ed., supp. 3925, without change of substance, except that § 53 of the county law only requires the statement to specify the town or city in which the corporation is assessed.】

§ 58. Statement of valuation to be forwarded to comptroller.—The clerk of each board of supervisors shall, on or before the second Monday in December, transmit to the comptroller, in the form to be prescribed by such comptroller, a certificate or return of the aggregate assessed and equalized valuation of the real and personal estate in each tax district as the valuation of such real estate has been corrected by such board, and the amount of tax assessed thereon for town, city, school, county and state purposes. Also the names of the several incorporated companies liable to taxation in such county, the nature of their business, the amount of the capital stock paid in and secured to be paid in by each, the amount of real and personal property of each as put down by the assessors, or by it, the amount of taxes assessed on each, and the amount of personal property on which each such corporation is exempt on account of the payment of state taxes on its capital. In the city of New York such report shall be made by the clerk or the board of aldermen, and for the purpose of making such report he may require any department or board of such city to furnish the necessary information.

【R. S., pt. I, ch. 13, tit. II, § 34; 8th. ed., 1105, R. S., pt. 1, ch. 13, tit. 4, § 16; 8th. ed., 1151, without change of substance, except that a date is fixed for the transmission of the certificate, and the report is to be made on the basis of “tax districts” instead of towns and wards.

The legislature added the last sentence, and made several verbal changes in other parts of the section.】

§ 59. Abstract of warrant to be furnished county treasurer.— On or before the twentieth day of December in each year, the clerk of the board of supervisors shall transmit to the treasurer of the county an abstract of the tax-rolls, stating the names of the collectors, the amount of money which each is to collect, the purpose for which it is to be collected, and the persons to whom and the time when it is to be paid. The county treasurer, on receiving such account, shall charge to each collector the amount to be collected by him.

[R. S., pt. I, ch. 13, tit. II, § 38; 8th. ed., 1106.]

The original law requires the abstract to be sent to the treasurer immediately on the delivery of the tax-rolls to the collectors (December 15th). The revision fixes December 20th.]

ARTICLE IV.

Collection of Taxes.

Section 70. Notice by collector.

71. Collection of taxes.

72. Collection of taxes assessed against stock in banks and banking associations.

73. Payment of taxes by railroad and certain other corporations.

74. Enforcement of tax against telegraph, telephone and electric light lines.

75. Collection of taxes on rents reserved.

76. Collection of unpaid taxes on debts owing to non-residents of the United States.

77. Return of warrant for collection of taxes on debts owing to nonresidents; neglect to make return.

78. Remedy of tenant for taxes on part of lot.

79. Payment of taxes on part of lot.

80. Payment of taxes on state lands in forest preserve.

81. Fees of collector.

82. Return by collector of unpaid taxes.

83. Return when collection has been enjoined.

Section 84. Payment of moneys collected.

85. Extension of time for collection.

86. Appointment of collector in case of vacancy.

87. When sheriff shall execute collector's warrant.

88. Satisfaction of collector's bond.

89. Unpaid tax on resident real property to be reassessed.

90. Payment to creditors of the county.

91. Payment of state tax.

92. Accounts of county treasurer with comptroller.

93. Losses by default of collector or treasurer.

94. Article, how applicable.

§ 70. Notice by collector.— Every collector, upon receiving a tax roll and warrant, shall forthwith cause notice of the reception thereof to be posted in five conspicuous public places in the tax district, specifying one or more convenient places in such tax district, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least three days, and if in a city, at least five days, in each week for thirty days from the date of the notice, which shall be the date of the posting or first publication thereof, which days shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll. The collector shall attend accordingly, and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place. In a city, the notice in addition to being posted shall be published once in each week, for two weeks successively, in a newspaper published in such city.

[L. 1845, ch. 180, § 29 ; R. S., 8th ed., 918.

In a city the notice is required to specify five days in the week and be published for two weeks. This provision is new. Otherwise, there is no change in substance.]

§ 71. Collection of taxes. — After the expiration of such period of thirty days, the collector shall call, at least once, on every person taxed upon such roll, whose taxes are unpaid, at his usual place of residence, if he is an actual inhabitant of such

tax district, and demand payment of the taxes charged to him on his property. If any person shall neglect or refuse to pay any tax imposed on him, the collector shall levy upon any personal property in the county belonging to or in the possession of any person who ought to pay the tax, and cause the same to be sold at public auction for the payment of such tax, and the fees and expenses of collection ; and no claim of property to be made thereto by any other person shall be available to prevent such sale. Public notice of the time and place of sale of the property to be sold shall be given by posting the same in at least three public places in the tax district where the sale is to be made, at least six days previous thereto. If the proceeds of such sale shall be more than the amount of such tax, the fees of the collection and the expenses of the sale, the surplus shall be paid to the person against whom the tax was assessed. If any other person shall claim the surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for the payment of whose tax the sale was made, such surplus shall be paid to such other person. If such claim be contested by the person for the payment of whose tax the property was sold, such surplus shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties thereto shall be determined by due course of law, or by agreement in writing made by them and filed with the supervisor.

[R. S., pt. I, ch. 13, tit. III, §§ 1, 3, 4, 5 ; 8th ed, 1116,

R. S., pt. I, ch. 13, tit. III, § 2 ; 8th ed., 1117 as am. by L. 1892, ch. 196; R. S., 8th ed., supp., 3251.

R. S., pt. I, ch. 13, tit. IV, § 17; 8th ed., 1151,

consolidated without change of substance, except that the provision of the last sentence allowing an agreement to be filed with the supervisor is new. So also is the provision that the tax may be collected out of any property in the county instead of the district. Section 265 of revision provides the method by which a disputed claim to surplus is determined.]

§ 72. Collection of taxes assessed against stocks in banks and banking associations.—Every bank or banking association shall retain any dividend until the delivery to the collector of the tax-roll and warrant of the current year, and within ten days after such delivery, shall pay to such collector so much of such dividend as may be necessary to pay any unpaid taxes assessed on the stock upon which such dividend is declared. In case the owner of such stock resides in a place other than where the bank or banking association is located, the same power may be exercised in collecting the tax so assessed as is given in case a person has removed from a tax district in which the assessment was made. The tax so assessed shall be and remain a lien on the shares of stock against which it is assessed till the payment of such tax, and if the stock is transferred it shall be subject to such lien. The collector or county treasurer may foreclose such lien in any court of record, and collect from the avails of the sale of the stock the tax assessed against the same. In addition thereto, the same remedy may be had for the collection of the tax on such shares as is now provided for by law for enforcing payment of personal tax against residents.

[L. 1882, ch. 409, §§ 314, 315; R. S., 8th ed., 1580, as am. by L. 1892, ch. 714; R. S., 8th ed., supp. 3285.]

The existing law is ambiguous. Section 315 requires the banking association "to retain, and within thirty days after declaring the same to pay over to the collector, etc., any dividend belonging to such stockholder as shall be necessary to pay any taxes assessed, etc." The dividend may be declared more than thirty days before the delivery of the roll, and the collector would not be in a position to receive the tax.]

§ 73. Payment of taxes by railroad and certain other corporations.—Any railroad, telegraph, telephone or electric-light company may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax, with one per centum fees, to the county treasurer, who

shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time.

[L. 1870, ch. 506, §§ 2-5; R. S., 8th ed., 1786,

L. 1886, ch. 659, § 5; R. S., 8th ed., 2067,

without change of substance. Section 56 of revision provides for the filing of statement by clerk of board of supervisors with the county treasurer. Section 81 of revision provides the fees of collectors.]

§ 74. Enforcement of tax against telegraph, telephone and electric-light lines.—Collection of tax against a telegraph, telephone or electric-light line may be enforced by sale of the instruments and batteries connected with such line, and in case there is not sufficient personal property, together with such instruments and batteries, to pay such tax and the percentage due the collector, he shall return a statement thereof to the county treasurer as other unpaid taxes are returned, and the county treasurer shall proceed to sell such part of the line in the tax district where the tax was levied as may be necessary to satisfy the unpaid taxes and percentage, in the manner now provided by law for the sale of lands on execution, and upon such sale shall execute to the purchaser a conveyance of such part of said line, and the purchaser shall thereupon become the owner thereof. Nothing herein contained shall be construed to prevent collection of such taxes by any procedure now provided by law.

[L. 1886, ch. 659, §§ 3, 6; R. S., 8th ed., 2066,
without change.]

§ 75. Collection of taxes on rents reserved.—If any tax upon any such tax-roll upon rents reserved is not paid, the collector shall collect the same by levy and sale of the personal property

of the persons against whom the tax is levied, which may be found within the county. If no sufficient personal property belonging to such person can be found in the county, the collector shall collect such tax of the tenant or lessee in possession of the premises, on which the rent is reserved, in the same manner as if such tax had been assessed against such tenant or lessee. Every such tenant or lessee paying any such tax, or of whom any such tax shall be collected, shall be entitled to have the amount thereof, with interest, deducted from the amount of rent reserved upon such premises, which may be due or may thereafter become due thereon, or may maintain an action to recover the same.

[L. 1846, ch. 327, § 3; R. S., 8th ed., 1107,

re-enacted in part, without change of substance, except that the tax may be collected by sale of any property in the county instead of the tax district. This is to conform to the change in § 71 as to the collection of taxes by sale generally. Section 21 provides that if the person entitled to receive the rents is not known, the tax shall be assessed directly to the tenant.]

§ 76. Collection of unpaid taxes on debts owing to nonresidents of the United States.—If it shall appear by the return of any collector that any tax imposed upon a debt owing to a person residing out of the United States remains unpaid, the county treasurer shall, after the expiration of twenty days from such return, issue his warrant to the sheriff of any county in this state where any debtor of any such nonresident creditor may reside, commanding him to make of the real and personal property of such nonresident the amount of such tax, to be specified in a schedule annexed to the warrant, with his fees and the sum of one dollar for the expense of issuing such warrant, and to return the warrant to the treasurer issuing the same, and to pay over to him the money which shall be collected by virtue thereof, except the sheriff's fees, by a day therein to be specified within sixty days from the date thereof.

The taxes upon several debts owing to a nonresident shall be included in one warrant. The taxes upon several debts owing to different nonresidents may be included in the same warrant, and the sheriff shall be directed to levy the sum specified in the schedule annexed, upon the real and personal property of the nonresidents, respectively, opposite to whose names, respectively, such sums shall be written, with fifty cents for the expenses of the warrant.

Such warrant shall be a lien upon and shall bind the real and personal property of the nonresidents against whom issued from the time an actual levy shall be made upon any property by virtue thereof, and the sheriff to whom the warrant shall be directed shall proceed upon the same, in all respects, with like effect, and in the same manner, as prescribed by law, in respect to execution against property issued upon judgment rendered in the supreme court, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.

[L. 1851, ch. 371, §§ 6-8; R. S., 8th ed., 1084,
without change of substance. See note to § 34.]

§ 77. Return of warrant for collection of taxes on debts owing to nonresidents; neglect to make return.—If any sheriff shall neglect to return any such warrant as directed therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court by attachment in the same manner, and with like effect, as for similar neglect in reference to an execution issued out of the supreme court in a similar action, and the proceedings therein shall be the same in all respects.

If any such warrant shall be returned unsatisfied, wholly or partly, the county treasurer may obtain an order from a judge of the supreme court of the district, or a county judge of the county, of such treasurer, issuing the warrant, requiring such nonresident or any person having property of such nonresident or indebted to him, to appear and answer concerning the prop-

erty of such nonresident. The same remedies and proceedings may be had in the name of such county treasurer or comptroller before the officer granting such order, and with a like effect, as are provided by law in proceedings against a judgment debtor supplementary to execution against him, returned wholly or in part unsatisfied.

The expenses of a county treasurer, and such compensation as the board of supervisors may allow him for his services under this section, and for making and transmitting to the assessors of the several towns of his county an abstract or copy of the statements of the agents of nonresident creditors, shall be a county charge.

[L. 1851, ch. 371, §§ 9, 10, 11; R. S., 8th ed., 1085, without change of substance.]

§ 78. Remedy of tenant for taxes paid by him.—If a tax upon real property shall have been collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due or accruing from him to such person for the land so taxed.

[R. S., pt. I, ch. 13, tit. V, § 4; 8th ed., 1160, without change of substance.]

§ 79. Payment of taxes on part of lot.—The collector shall receive the tax on part of any lot, piece or parcel of land charged with taxes, provided the person paying such tax shall furnish such particular specification of such part, and in case the tax on the remainder thereof shall remain unpaid the collector shall enter such specification on his return to the county treasurer, clearly showing the part on which the tax remains unpaid, and if the part on which the tax shall be so paid shall be an undivided share, the person paying the same shall state to the collector who is the owner of such share, and the collector shall enter the name of such owner on his account of arrears

of taxes, and such share shall be excepted in case of a sale for the tax on the remainder.

[R. S., pt. I, ch. 13, tit. III, §§ 8, 9; 8th ed., 1118, without change of substance.]

§ 80. Payment of taxes on state lands in forest preserve.—The treasurer of the state, upon the certificate of the comptroller as to the correct amount of such tax, shall pay the tax levied upon state lands in the forest preserve, by crediting to the treasurer of the county in which such lands may be situated, such taxes, upon the amount payable by such county treasurer to the state for state tax. No fees shall be allowed by the comptroller to the county treasurer for such portion of the state tax as is so paid.

[Fisheries, game and forest law (1895, ch. 395), § 274 in part, without change.]

§ 81. Fees of collector.—On all taxes paid within thirty days from the date of notice that he has received the roll, the collector shall be entitled to receive, if the aggregate amount shall not exceed two thousand dollars, two per centum, and otherwise one per centum, in addition thereto. On all taxes collected after the expiration of such period of thirty days, the collector shall be entitled to receive five per centum in addition thereto. The collector shall be entitled to receive from the county treasury two per centum as fees for all taxes returned to the county treasury as unpaid.

[R. S., pt. I, ch. 13, tit. III, § 10; 8th ed., 1118, as am. by L. 1890, ch. 145; R. S., 8th ed., supp., 3252, R. S., pt. I, ch. 13, tit. IV, § 20; 8th ed., 1151, L. 1855, ch. 427, §§ 6, 7; R. S., 8th ed., 1130.

The provision that the return shall be made in the form prescribed by the board of tax commissioners is new. Otherwise there is no change in substance.]

§ 82. Return by collector of unpaid taxes.—Every collector who makes and delivers to the county treasurer an account of

unpaid taxes, upon the tax-roll annexed to his warrant, which he shall not have been able to collect, verified by his affidavit, that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry been able to discover any personal property out of which the same could be collected by levy and sale, shall be credited by the county treasurer with the amount of such account. In making such return of unpaid taxes, the collector shall add thereto five per centum of the amount thereof. In case such tax is uncollected upon lands assessed to a resident he shall also state the reason why the same was not collected. Such return shall be indorsed upon or attached to said roll, and shall be in the form to be prescribed by the state board of tax commissioners. Such tax and percentage may be paid to the county treasurer at any time before a return is made to the comptroller.

[R. S., pt. I, ch. 13, tit. III, § 10; 8th ed., 1118, as am. by L. 1890, ch. 145; R. S., 8th ed., supp., 3252, R. S., pt. I, ch. 13, tit. IV, § 20; 8th ed., 1151, L. 1855, ch. 427, §§ 6, 7; R. S., 8th ed., 1130.

The provision that the return shall be made in the form prescribed by the board of tax commissioners is new. Otherwise there is no change in substance.

The legislature added the words "In making such return of unpaid taxes, the collector shall add thereto five per centum of the amount thereof."]

§ 83. Return when collection has been enjoined.—Any stay, lawfully granted by any court of record by injunction or other order or proceeding, of the collection of any tax existing at the expiration of the period for the collection of the tax under any warrant or process in the hands of the collector or other officer for the collection thereof, or existing at the time of the expiration of the term of office of the collector or officer holding such warrant, shall operate as an extension of the time within which such collector or other officer may collect such tax until such stay is terminated and for the period of thirty days thereafter.

As to all other taxes to be collected under any such warrant or process, the collector or officer holding the warrant or process shall make a return thereof within the time prescribed by law.

[L. 1853, ch. 69, § 1; R. S., 8th ed., 1121.

The original act provides that if the stay commences within thirty days after the receipt of the warrant, the collector shall have sixty days, and otherwise, an additional thirty days within which to enforce the warrant. Section 83 of revision provides that the stay shall operate uniformly as an extension so long as it shall be in force and for thirty days thereafter. Otherwise there is no change.]

§ 84. Payment of money collected.—Every collector shall, within one week after the time prescribed in his warrant for the payment of the moneys directed therein to be paid, pay to the officers and persons specified therein, the sums required in such warrant to be paid to them respectively. The officers and persons other than the county treasurer, to whom any such money shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer and shall entitle him to a credit in the books of the county treasurer for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer. If any greater amount of taxes shall be levied in any town than the town charges thereof, and its proportionate share of the state taxes and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and it shall go to the reduction of the tax upon the town for the succeeding year.

[R. S., pt. I, ch. 13, tit. III, §§ 6, 7; 8th ed., 1117, without change.]

§ 85. Extension of time for collection.—The county treasurer, upon application of the supervisor of any town or common council of any city in his county, may extend the time for collection

of taxes remaining unpaid to a day not later than May first, following, in case the collector shall pay over all moneys collected by him and make his return of nonresident taxes, and renew his bond in a penalty twice the amount of the taxes remaining uncollected, approved by the proper officer upon filing the same, as the original bond is required to be filed, and delivering a certified copy thereof to such treasurer. Receivers of taxes who have filed a bond as required by statute shall not be required to renew their bonds.

This section shall not affect any special law relating to the extension of time for the collection of taxes, nor be construed to extend the time for the payment of the state tax by the county treasurer, as required by this chapter.

[L. 1857, ch. 7, R. S., 8th ed., 1122,
L. 1885, ch. 10; R. S., 8th ed., 1122.

The act of 1857 was superseded by the act of 1885, and the revisers have followed the act of 1885 in framing § 85.]

§ 86. Appointment of collector in case of vacancy.—If a person chosen to the office of collector of a town shall refuse to serve or be disabled from entering upon or completing the duties of his office from any cause, the town board shall forthwith appoint a collector for the remainder of the year, who shall give the same undertaking, be subject to the same duties and penalties and have the same powers and compensation as the collector in whose place he was appointed. The supervisor of the town shall forthwith give notice of such appointment to the county treasurer. Such appointment shall not exonerate the former collector or his sureties from any liability incurred by him or them. If a warrant shall have been issued by the board of supervisors before the appointment of a collector to fill a vacancy or before the appointment of a collector under this section, the original warrant, if obtainable, shall be delivered to the collector so appointed and shall give him the same powers as if originally issued to him. If such warrant is not obtainable, a new one shall be issued by the chairman and clerk of the board

of supervisors of the county, directed to the collector appointed, with the same force and effect as if originally issued to him. Upon any such appointment, the supervisor of the town or ward, if he shall deem it necessary, may extend the time limited for the collection of taxes, for a period not exceeding thirty days, and forthwith give notice of such extension to the county treasurer.

【R. S., pt. I, ch. 13, tit. III, §§ 11, 12; 8th ed., 1118, without change, except that the old law requires the new collector to be appointed by “the supervisor and any two justices of such town or ward,” whereas the appointment under § 86 is made by the town board.】

§ 87. When sheriff shall execute collector's warrant.—If the collector of any tax district in the State shall neglect or refuse to execute an official bond or undertaking as required by law, or the supervisor of the town shall refuse or neglect to approve and file the same, within the time prescribed by law, and a new collector shall not have been appointed within ten days after the time when such bond or undertaking should have been filed, the board of supervisors shall deliver the tax-roll or a copy thereof with the warrant annexed, to the sheriff, who shall give a like undertaking as is required from the collector, and who shall then proceed with the collection of the taxes levied therein in like manner as collectors are authorized by law to do, and with like powers and subject to the same duties and obligations. Every such warrant shall require all payments therein specified to be made by the sheriff within sixty days after the receipt of the warrant by him. The expense of the collection of such taxes by him, if any, over and above the fees lawfully chargeable by the collector, shall be audited by the board of supervisors and shall be a charge upon the town.

【L. 1857, ch. 585; R. S., 8th ed., 1123, without change of substance.】

§ 88. Satisfaction of collector's bond.—Upon the settlement of the account of taxes directed to be collected by a collector in any town or city, except in the city of New York, the county

treasurer shall, if requested, and if the collector shall have fully paid over or duly accounted for all the taxes which he was required by law to collect, give to such collector or any of his sureties a written satisfaction of the collector's undertaking duly acknowledged and, upon the filing thereof in the office of the clerk of the county where the undertaking is recorded, the clerk shall enter satisfaction of such undertaking which shall thereby be discharged.

[R. S., pt. I, ch. 13, tit. III, §§ 20-21; 8th ed., 1120, without change, except that the clause "if the collector shall have fully paid over and duly accounted for all the taxes which he was required by law to collect," is new. It is, however, implied in the original law.]

§ 89. Unpaid taxes on resident real property to be reassessed.—When the tax on any real property, not assessed as nonresident, is returned as unpaid and so remains, the county treasurer shall, during the month of July, furnish to a supervisor of the tax district in which such real property is located, a certified abstract of the tax-roll relating to such unpaid taxes, and such supervisor, before the delivery of the assessment-roll of such tax district to the collector, shall add a description of such real property to the assessment-roll of the then current year in the part thereof relating to nonresident lands, stating that it is a reassessment of such tax, and shall charge the same therewith. The amount of such tax shall bear interest at the rate of eight per centum per annum from the time it was returned to the county treasurer as unpaid until paid, or until the sale of such property to satisfy such tax by the county treasurer, or if the property is located in a county embracing a portion of the forest preserve, until the returns of such unpaid tax to the comptroller. Thereafter it shall be regarded for all purposes of assessment and collection, as a nonresident tax for the year in which such description is added. Such description shall conform to the direction of the state board of tax commissioners. If necessary, the county treasurer may cause proper surveys and maps to be made to

enable such lands to be sold by description sufficient to convey title.

【L. 1855, ch. 427, § 5; R. S., 8th ed., 1130.

The original law provides merely that the supervisor of a town or ward shall add a description of the land to the roll of the following year. In practice the description is obtained from the county treasurer, but it has been thought best to add an express provision, that the county treasurer shall deliver an abstract of the tax-roll relating to such unpaid taxes to the supervisor during the month of July, thus giving the supervisor ample time to add the description to the assessment-roll of the current year.

The provision that the amount of tax shall bear interest at eight per centum, et cetera, was added by the legislature.】

§ 90. Payment to creditors of the county.— Each county treasurer shall pay to the creditors of the county from the moneys paid to him by the collectors of taxes of the several towns therein, such sums and in such manner as the board of supervisors of the county direct.

【L. 1855, ch. 427, § 1; R. S., 8th ed., 1129,
without change of substance.】

§ 91. Payment of state tax.— The comptroller shall charge each county treasurer with the amount of the state tax levied on his county, crediting him with his fees, if any, but no fees shall be allowed by the comptroller for such portion of the state tax as is credited by him for unpaid nonresident taxes. The county treasurer of each county shall, after retaining his fees thereon, at the rate of one per centum thereof, which shall not, however, in any case exceed fifteen hundred dollars, pay the state tax to the treasurer of the state, as follows: One-third thereof on or before the fifteenth day of February, one-third thereof on or before the fifteenth day of April, and, unless otherwise provided by law, the balance thereof on or before the fifteenth day of May, in each year, and notify the comptroller of such payment. If there are not sufficient

funds in the county treasury standing to the credit of any town to pay the state tax chargeable thereto, the treasurer shall borrow sufficient money upon the credit of the county and charge the same against such town with interest thereon until the same is paid. If any county treasurer shall not pay over the state tax as herein directed, the comptroller shall charge on all sums withheld such rate of interest as shall be sufficient to repay all expenditures incurred by the state in borrowing money equivalent to the amount so withheld, and such additional rate as he shall deem proper, not exceeding ten per centum, from the dates hereinbefore provided for such payments in each year, which shall be regarded as funds in the hands of the county treasurer belonging to the state and for which his sureties and county shall be liable.

[L. 1855, ch. 427, §§ 2, 3, 8; R. S., 8th ed., 1129,

County Law (1892, ch. 686), § 141; R. S., 8th ed., supp., 3942, Laws 1895, ch. 558,

without change of substance, following L. 1895, ch. 558, which supersedes Co. L., § 141, and L. 1855, ch. 427, § 2.

The bill as reported allowed treasurers to receive fees aggregating not to exceed two thousand dollars. The legislature changed this to one thousand five hundred dollars. The legislature also struck out a provision allowing payment to be made by deposit in a bank entitled to receive state deposits.]

§ 92. Accounts of county treasurer with comptroller. — The comptroller shall state annually on June first, the account of each county treasurer, and if any part of a state tax is unpaid at that date, the comptroller shall transmit by mail to the county treasurer a copy of such accounts and a requisition that he must pay the balance due the state within thirty days, and if the tax is not paid within such time, the comptroller shall, unless he is satisfied by due proof that the treasurer has not received such balance, and has used due diligence in collecting the same, forthwith deliver a copy of the account to the attorney-general, who shall take the necessary proceedings to collect the same of the

county treasurer or his sureties or otherwise, with interest as provided by the last preceding section. The comptroller may also, in his discretion, direct the board of supervisors of the county to institute the necessary proceedings on the undertaking of such county treasurer and his sureties. The comptroller shall also transmit to the board of supervisors on or before October tenth, a statement of account between his office and the county treasurer.

[L. 1855, ch. 427, §§ 11-15 ; R. S., 8th ed., 1131.

The date for the settlement of the account is changed from May 1 to June 1. This is rendered necessary by reason of the change in the time of the payment of the state tax.

L. 1855, ch. 427, § 12, provides that interest may be recovered from May 1. This is also changed to conform to L. 1895, ch. 558, which allows interest from the time the tax is due. The comptroller is required by L. 1855, ch. 427, § 15, to transmit a statement of account to the supervisors on or before the first Tuesday in October changed to October 10. The comptroller's books are balanced on September 30, the last day of the fiscal year, and October 10 will give him sufficient time to transmit statement.]

§ 93. Losses by default of collector or treasurer. — All losses sustained, and all deficiencies in any taxes, or in the payments to be made therefrom, by reason of the default of any collector, shall be chargeable to the town, or city of which he is collector. If occasioned by the default of the treasurer of any county in the discharge of his official duties, such losses shall be chargeable to such county. Any judgment against such treasurer for any such loss or deficiency on account of the state tax upon which an execution shall have been issued and returned unsatisfied shall be conclusive as to the fact of such loss or deficiency, and the amount of such deficiency shall thereupon become a charge against such county, and the board of supervisors thereof shall add all such losses or deficiencies to the next year's taxes of such town, city or county, and levy the same thereon.

[R. S., pt. I, ch. 13, tit. V, § 5 ; 8th ed., 1160.

L. 1855, ch. 427, § 25; R. S., 8th ed., 1133.

The old law provides that loss from default of the collector shall be chargeable to the town or ward. Section 93 makes the loss chargeable to the town or city. Collectors in cities often do not act for wards as such, but for the city as a whole.]

§ 94. Article, how applicable.—This article shall apply to all the cities or towns of the state, in so far as the matters herein provided for do not conflict with the special and local laws of such cities or towns.

[L. 1845, ch. 180, § 32; R. S., 8th ed., 919, without change of substance.]

ARTICLE V.

Collection of Nonresident Taxes.

Section 100. Return of unpaid nonresident taxes.

101. Rejection of taxes.

102. Admission of nonresident taxes by comptroller and its effect.

103. Payment to the county treasurer of excess of arrears credited.

104. Cancellation of tax by comptroller.

105. Transmittal of statement of cancelled taxes to board of supervisors.

106. Correction of imperfect descriptions.

107. Nonresident taxes, when and how paid the comptroller.

108. Reduction of overcharges.

109. Overpaid taxes.

§ 100. Return of unpaid nonresident taxes.—The collector shall return the original assessment-roll to the county treasurer and when the treasurer finds an account of unpaid nonresident taxes, or unpaid taxes on corporations, received from a collector to be a true transcript of such original assessment-roll to which the collector's warrant is attached, he shall add to it a certificate that he has examined and compared the account with such roll

and found it to be correct, and after crediting the collector with the amount thereof, he shall, in case his county embraces a portion of the forest preserve, before the first day of April next ensuing, transmit such account, affidavit and certificate to the comptroller, who may before acting thereon return any such account to the county treasurer for correction, who shall make such correction and return to the comptroller in one month thereafter, or as the comptroller may otherwise direct.

[L. 1885, ch. 427, § 4; R. S., 8th ed., 1129,
R. S., pt. I, ch. 13, tit. IV, § 20; 8th ed., 1151,
re-enacted without change.]

§ 101. Rejection of taxes. — The comptroller shall examine every account of arrears of taxes on lands of nonresidents received from the county treasurer and reject all taxes entered therein, found to be erroneous, or charged on lands imperfectly described, and shall annually on or about September first, transmit to each county treasurer a transcript of the taxes of the preceding year in any tax district of his county, which shall have been rejected for any cause, with the grounds of such rejection.

[L. 1855, ch. 427, §§ 9, 16; R. S., 8th ed., 1131,
without change of substance.]

§ 102. Admission of nonresident taxes by comptroller and its effect. — The comptroller shall admit all such taxes, properly assessed, and credit the county treasurer therewith, and such account, when accepted by him, shall be deemed conclusive evidence of the regularity and validity of all taxes therein so admitted, and all prior proceedings in assessing the lands and levying and collecting such taxes, except when it shall be satisfactorily proven to the comptroller that any such tax was paid in the county, or that there was no legal right to levy the same, or that it arose from a double assessment, the tax levied on one of which has been paid.

[L. 1855, ch. 427, §§ 4, 9; R. S., 8th ed., 1129,
without change of substance.]

§ 103. Payment to the county treasurer of excess of arrears credited.—If the arrears of taxes on lands of nonresidents credited to the treasurer of any county by the comptroller shall exceed the state tax in such county, the comptroller shall pay such excess, or the whole amount of such arrears, if there be no state tax, after deducting therefrom any balance due from the county, to the county treasurer, and the whole amount of such arrears and taxes shall thereafter belong to the state and be collected for its benefit.

[L. 1855, ch. 427, § 10; R. S., 8th ed., 1131,
without change of substance.]

§ 104. Cancellation of tax by comptroller.—The comptroller shall cancel any tax credited to a county upon the books in his office, which he shall discover after the transmission of the annual transcript of rejected taxes of such county to the county treasurer, to be erroneous, or charged on lands imperfectly described, and charge such taxes to the county in which such lands shall lie, with the interest thereon from March first, in the year following the levy of the taxes, to February first next after such cancellation. The comptroller shall cancel any tax returned as unpaid if it shall be made to appear to him that previously to such return it was paid to the collector or county treasurer, and if it shall also have been paid into the state treasury, he shall cause it to be repaid out of the treasury to the person by whom such payment shall have been made.

[L. 1855, ch. 427, §§ 17, 22; R. S., 8th ed., 1132,
re-enacted in part, without change of substance.]

§ 105. Transmittal of statement of cancelled taxes to board of supervisors.—The comptroller shall transmit a transcript of the returns of all taxes cancelled, with the addition of interest thereon, to the county treasurer, who shall deliver a copy thereof to a supervisor of the tax district in which such taxes were assessed, by whom it shall be returned to the board of supervisors at their next annual meeting. If such tax district shall have

been divided since the assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next annual meeting. If any such cancellation was by reason of the tax having been paid before the same was returned by the county treasurer, such treasurer shall present the transcript to the board of supervisors of the county, and the amount of such tax, with the interest, shall be collected by such board or the collector or the county treasurer who made the erroneous returns, and shall be paid into the state treasury.

[L. 1855, ch. 427, §§ 18, 23; R. S., 8th ed., 1132, without change of substance.]

§ 106. Correction of imperfect descriptions.—The supervisor of the tax district in which any lands are situated, upon which a tax shall have been rejected by the comptroller, or shall have been cancelled and charged to the county to which it had previously been credited, shall add to the assessment-roll of the tax district in which the land is situated for the year during which a transcript of the returns of such taxes shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands, if he can obtain the same, the correct amount of taxes thereon, the tax of each year and each kind of tax separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall be required by him. Such supervisor may, if necessary, cause a survey and map of each lot or parcel returned for more perfect description to be made, and the expense of such survey and map shall be a town charge. The board of supervisors shall direct the collection of such taxes so added to such assessment-roll, and they shall be considered the taxes of the year in which the description shall be perfected. If any such supervisor shall not fully comply with the provisions of this section the comptroller shall not thereafter admit, but shall reject, all such reassessed, cancelled or rejected taxes as may be returned to him. If such taxes are not levied upon such lands as herein required, the board of supervisors shall cause the same, with interest thereon, to be levied upon the tax district in

which originally assessed, and collected with the other taxes of the same year. If the tax district shall have been divided since such assessment, such taxes and interest shall be apportioned by the board of supervisors among the tax districts included in the limits of such original tax districts in such equitable manner as it may deem proper.

[L. 1855, ch. 427, §§ 19-21; R. S., 8th ed., 1132, without change of substance.]

§ 107. Nonresident taxes, when and how paid to comptroller.—The comptroller shall, at any time after August first, next after receiving statement thereof from the county treasurer, furnish any person desiring to pay the taxes on any parcel of land, a certificate of the amount of such taxes, interest and charges, and the State treasurer may receive payment therefor upon such certificate, which shall be countersigned by the comptroller and entered in the books of his office. Such interest shall begin August first, of such year, and be at the rate of ten per centum per annum. Any person claiming a divided or undivided part in any parcel may pay to the State treasurer any part of the amount due thereon, proportionate to the share or interest claimed by him, on the certificate of the comptroller. The remaining tax and charges shall be a lien on the residue of the land or interest only. If the land has been subdivided since the assessment, the comptroller may require a map of the subdivisions. Any person may pay the tax for any one year on any tract or lot of land without paying the tax of any other year.

[L. 1855, ch. 427, §§ 26-30; R. S., 8th ed., 1133, re-enacted without change of substance.]

§ 108. Deduction of overcharges.—If any tract or lot of land shall have been returned as containing a greater quantity of land than it actually contained, the amount overcharged shall be deducted. If the tax shall have been paid according to such return, the overcharge shall be refunded out of the treasury upon the production to the comptroller of satisfactory proof of the

quantity actually contained in each tract or lot at the time of the assessment. No such overcharge shall be cancelled nor such over-payments refunded, unless application shall be made to the comptroller before the sale of such lands, and within six years after the assessment. If the whole amount of the tax shall have been paid to the county treasurer out of the state treasury, the comptroller shall charge the amount so refunded with interest and charges thereon to the treasurer of the county to which the tax was returned, and shall transmit an account thereof to him. The county treasurer shall deliver such account to the board of supervisors at their next annual meeting, which shall cause the amount thereof to be added to the taxes of the tax district in which the tax was assessed, and when collected it shall be paid into the treasury of the county.

[L. 1855, ch. 427, §§ 30-32; R. S., 8th ed., 1134,
without change of substance.]

§ 109. Overpaid taxes.—If it shall satisfactorily appear to the comptroller that the amount of any tax has been paid, and afterwards other money has been paid into the state treasury on account of such tax or that the amount of any tax has been overpaid to the treasurer of the state, he may draw his warrant on the treasury for the amount paid in excess of the tax due, in favor of the person paying the same.

[L. 1855, ch. 427, § 24; R. S., 8th ed., 1133,
without change of substance.]

ARTICLE VI.

Sales by Comptroller for Unpaid Taxes and Redemption of Lands.

Section 120. Notice of sale.

121. Maps to be furnished comptroller.

122. Sale, how conducted.

123. Purchases by comptroller, for state or county.

124. Withdrawal from sale of lands upon which the state
has a lien.

- Section 125. Payment of bids and certificate of purchase.
- 126. New certificate upon setting aside sale.
 - 127. Redemption of lands.
 - 128. Redemption of lands conjointly assessed.
 - 129. Prohibition of the despoliation of lands sold.
 - 130. Notice of unredeemed lands.
 - 131. Comptroller's deed.
 - 132. Effect of former deeds.
 - 133. Possession of lands by the state.
 - 134. Notice to occupants.
 - 135. Certificate of nonredemption and completion of title.
 - 136. Redemption by occupant and certificate of redemption.
 - 137. Redemption by occupant before notice and effect of failure to redeem.
 - 138. Lien of mortgage not affected by tax sale.
 - 139. Redemption by mortgagee before notice.
 - 140. Cancellation of sales.
 - 141. Setting aside cancellation of sale.
 - 142. Expenses of sale.
 - 143. Payment of moneys into state treasury.

§ 120. Notice of sale.—The comptroller may sell any lands heretofore or hereafter returned to him for nonpayment of any tax thereon, if such tax and the interest thereon, or any part thereof shall remain unpaid for one year after February first, following the year in which the tax was levied. He shall make out a list of all such lands in any county and transmit to the county treasurer thereof at least eighteen weeks before the commencement of the sale, a number of copies of such list sufficient to furnish five copies to the county treasurer, two copies to the county clerk and two copies to the clerk of each town and city in which such lands are situated. The county treasurer shall transmit the same to such officers. The comptroller shall publish such list with a notice, that on a day to be specified therein and the succeeding days, so much of such lands as may be necessary to

discharge the taxes, interest and charges due thereon at the time of sale, will be sold at public auction at the capitol in the city of Albany. Such list shall be inserted in two newspapers published in such county, once in each week for twelve successive weeks prior to the commencement of the sale, and in the body of the newspapers and not in a supplement. If there are not two newspapers published in the county, the publication shall be in two newspapers which the comptroller shall determine to be most generally circulated in the county. Due proof of the publication of such list and notice in each newspaper shall be made and filed in the office of the comptroller within twenty days after the last publication. The expense of printing, publishing and transmitting such list shall be audited by the comptroller and paid out of the state treasury. No error in the description of the lands in any list published in any newspaper shall render any sale void or in any manner affect its validity.

[L. 1855, ch. 427, § 41; R. S., 8th ed., 1135,
L. 1893, ch. 711, § 1, as am. by
L. 1895, ch. 895,
without change.]

§ 121. Maps to be furnished comptroller.—The comptroller may apply to the supervisor of any town for maps of any tract of land returned from such town for nonpayment of taxes, if he deem it necessary in order to test the correctness of the description thereof, preparatory to a sale of such lands, and the supervisor shall furnish such maps at the expense of the town, if they can be procured; if not, he shall furnish such descriptions of the lands as he can obtain, with a statement of the quantity in each subdivision, if the same is divided. The treasurer of every county shall, on receiving a list of lands to be sold at a state sale transmit to the comptroller at least one month before any state tax sale, a certified list of all lands bid in at any tax sale, in the name of such county, or transferred to such county upon any such sale, or to which the county may have acquired a tax title, the deed for which has not been recorded in the office of the clerk of the

county, which may then be liable to be sold at such sale. Every county clerk shall, on receipt of a list of the lands therein liable to be sold at any state tax sale, and at least one month before the sale, transmit to the comptroller a certified list of all lands the conveyances of which are on record in his office, then owned by such county, and liable to be sold at such sale.

[L. 1893, ch. 711, § 2,
without change.]

§ 122. Sale, how conducted.—On the day mentioned in the notice of sale the comptroller shall commence the sale of the lands specified in the lists annexed to the notice, and continue the sale from day to day, until so much of each parcel shall be sold as will be sufficient to pay all the taxes thereon for the years for the taxes of which such sale shall be made, with the interest and charges thereon. In case no purchaser bids the amount due on any lot or parcel, the comptroller is authorized to bid in such lot or parcel for the state. The comptroller may, in his discretion, decline to receive any bid on any parcel of land, if in his opinion, it is made by or for any person not acting in good faith, and any such land shall be sold at such sale the same as if such bid had not been made thereon. And in case the land is located in a county outside the forest preserve, the comptroller may sell and assign the certificate therefor at any time before the expiration of the period for redemption, on such terms as to him shall seem for the best interests of the state.

[L. 1893, ch. 711, § 3, as am. by
L. 1895, ch. 895,

amended by providing that comptroller may sell or assign certificate within three months from the date of the sale instead of at any time before the expiration of the period of redemption, to conform to § 125 (L. 1893, ch. 711, § 6, as am. by L. 1895, ch. 895).]

§ 123. Purchases by the comptroller for state or county.—The comptroller shall bid in for the state all lands of the state liable

to be sold at any tax sale held by him, or lands that are then mortgaged to the commissioners for loaning certain moneys of the United States, and for each county, all lands belonging to such county liable to be sold at such sale, and also all lands which may have been bid in by or for such county at any tax sale which has not been cancelled or from which said lands have not been duly redeemed; and to reject any and all bids made for any of such lands. The comptroller shall make certificates of sales for all lands so bid in by him, describing the lands purchased and specifying the time when a deed therefor can be obtained. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the land so sold shall not be redeemed, the comptroller's deed therefor shall have the same effect and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals. The comptroller shall charge to each county, on the books of his office, the amount for which it may be liable, by reason of any purchase made in accordance with this section, and such amount shall become due on the last day of each tax sale and shall be payable in the same manner as the state tax is required by law to be paid. The comptroller shall, as soon as practicable, after each tax sale, transmit the certificates of sale for such lands to the treasurer of each of such counties, on receipt of which the county treasurer shall enter the same, in their proper order, in a book to be kept by him for such purpose, and unless otherwise directed by the board of supervisors of his county, shall have full power and authority, until the expiration of one year from the last day of such sale, to sell and assign any of such certificates for any land not at the time owned by his county, on payment therefor, into the county treasury, of the amount for which the land described therein was sold at such tax sale, with interest thereon, from the date of such tax sale to the date of such sale and assignment by him. All such sales and assignments shall be duly and fully entered by such county treasurer in such book, which book shall be a part of the records of the county. If any such tax sale certificate shall not have been

sold or assigned by the respective county treasurers on or before the expiration of one year from the last day of such sale, each of such county treasurers shall then transmit such unsold certificate or certificates to the comptroller, who shall issue to the board of supervisors of each county, respectively, a deed or deeds for all of the lands described thereon then remaining unredeemed, or the sale for which has not been cancelled. The title thus acquired by the boards of supervisors shall be held by them in trust for their respective counties, and may be disposed of by them at such times and on such terms as shall be determined by a majority of such board at any regular or special meeting thereof.

【This section was inserted by the legislature. It is a substantial re-enactment of L. 1855, ch. 427, § 66; R. S., 8th ed., 1140. The subsequent sections of this article were renumbered.】

§ 124. Withdrawal from sale of lands upon which the state has a lien.—No land against which the people of the state of New York hold a bond or lien for any part of the purchase price thereof shall be sold, but all such land shall be withdrawn from such sale. The amount of taxes, interest and expenses for which it may be liable to sale as shown by the comptroller's book of sales shall be charged against each lot, piece or parcel of such land in the books in the comptroller's office in which the accounts of school funds and other bonded lands are kept, and the state treasurer shall, on the receipt of a statement of such amounts, charge the same against the respective lots, pieces or parcels of land, on which they are due, on the duplicate bond-books kept in his office. The holder of the certificate or contract of purchase of any such land, may discharge the same from liability in consequence of such charge, by paying to the state treasurer at any time within two years after the last day of sale from which such lands were withdrawn, the amount of such charges with interest thereon at the rate of ten per centum annually. If such payment is not made, the comptroller shall, at the expiration of such two years, state an account of the indebtedness against each lot, piece or parcel of such land, with the addition of thirty-seven and one-

half per centum thereto, and the amount of principal and interest due on the bond or lien thereon, to the commissioners of the land office, who may thereupon, if default shall be made in the payment of such bond, direct the comptroller to put the same in suit, or shall direct the state engineer and surveyor to again sell the lands against which such indebtedness remains. Upon any sale thereof, all previous payments made on account of such land shall be forfeited to the people of the state. No conveyance of any such lands shall be made to any purchaser, until all such taxes and expenses charged against the same on such bond-book are paid into the state treasury.

[L. 1893, ch. 711, § 4,
without change.]

§ 125. Payment of bids and certificate of purchase.—Every purchaser at any sale of lands by the comptroller under this article shall pay the amount of his bid to the state treasurer within forty-eight hours after the last day of sale. Upon the payment of a bid to the comptroller he shall give to the purchaser a written certificate, describing the lands purchased, the sum paid and the time when the purchaser will be entitled to a deed.

[L. 1893, ch. 711, § 5,
without change.]

§ 126. New certificate upon setting aside sale.—If a purchaser shall not have paid his bid, or the same shall not have been collected from him at the expiration of one month from the conclusion of the sale, at which the bid was made, the comptroller may set aside the sale of land for which the bid was made, and all the rights of the purchaser under such bid shall thereby be extinguished, and the comptroller shall issue a certificate of such sale if the land be in a county including a portion of the forest preserve, to the people of the state. If said land be in a county not including any portion of the forest preserve, such certificate shall be issued to any person who will pay the same amount as would be payable by the original purchaser in case the sale had

not been set aside. If such certificate shall not have been sold within three months from the date of such sale he shall transfer the same to the people of the state. If the transfer, be to the people, the whole quantity of land liable to sale for the purchase-money mentioned in the certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale. The change of purchaser made pursuant to this section and the time when made shall be noted in the sales book, and the certificate issued shall confer the same right upon the state as it would have acquired had the land been bid in for it at the sale.

[L. 1893, ch. 711, § 6, as am. by
L. 1895, ch. 895,
without change.]

§ 127. Redemption of lands.—The owner or occupant of any lands sold by the comptroller for taxes, or any other person having an interest therein at the time of the sale, may redeem the same from such sale at any time within one year after the last day of the sale, by paying to the state treasurer, on the certificate of the comptroller for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate of sale therefor, with interest thereon at the rate of ten per centum per annum, after the date of such certificate of sale. The purchaser of any wild, vacant or unoccupied land at any such sale, or his assigns, shall not enter upon or exercise acts of ownership on such land, until the expiration of one year allowed for the redemption thereof from such sale. A person having an interest in an undivided part of any tract, lot or piece of land so sold, or in an undivided share in any tract or lot of land out of which an undivided part shall have been sold, may redeem such undivided part or share by paying such proportion of the purchase-money and interest as shall be in proportion to the part or share of the lands sold which he shall claim. Every person having an interest in a specific part of any tract, lot or piece of land, so sold, or lot of land out of which an undivided part may have been sold for taxes charged on the whole tract or lot, may redeem such specific part by paying such propor-

tion of the purchase money and interest as his quantity of acres shall bear to the whole quantity of acres sold, or to the whole quantity taxed. Any person claiming a specific part of any tract or lot of land, out of which a specific part belonging to some other person shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying to the comptroller at any time before the expiration of the time allowed for the redemption thereof, such proportion of the purchase-money and interest as his quantity of acres shall bear to the whole quantity taxed, and such payment shall operate as a redemption of his proportionate part of the lands sold according to the amount paid. Upon a partial redemption under this section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption and the comptroller shall convey accordingly.

[L. 1893, ch. 711, § 7,
without change.]

§ 128. Redemption of lands conjointly assessed.— If the lands of one person shall be sold for taxes assessed conjointly on his lands and lands of another, and the latter shall not pay his due proportion required for the redemption of his lands, the former may redeem the same on paying to the comptroller the purchase-money and interest, and he shall be entitled to recover, after the expiration of the time allowed for redemption, from the other person whose lands were assessed with his, a just proportion of the redemption moneys paid, with interest. If the lands of one person so sold for taxes assessed conjointly on his lands and the lands of another person, shall not be redeemed, and they shall be conveyed by the comptroller, the former may recover from the latter the same proportion of the value of the lands sold and conveyed, that the latter ought to have paid of the tax and interest and charges for which the land shall have been sold. Every judgment obtained under this section shall have priority as against the lands of the defendant therein, on which the tax was assessed, and for which such proportionate part ought to

have been paid, over all mortgages and judgments, if at the time of docketing such judgment the plaintiff cause an entry to be made by the clerk in the docket thereof, specifying that such judgment has priority as a lien on certain lands, over mortgages and other judgments, pursuant to the tax law, which entry shall be a part of such docket. In all actions under this section, the certificate of the state treasurer, countersigned by the comptroller, stating the facts in relation to such redemption, or sale and conveyance, shall be presumptive evidence of all facts therein stated.

[L. 1893, ch. 711, § 8,
without change.]

§ 129. Prohibition of the despoliation of lands sold.— Neither the owner, occupant nor any other person shall have the right to despoil any lands sold for taxes by the comptroller of their value, by the removal of buildings or by cutting, removing or destroying timber, or other valuable products, growing, existing or being thereon at the time of sale. The purchaser of any wild, vacant, or unoccupied land at the sale thereof by the comptroller, whose bid therefor shall have been fully paid, or his assigns or representatives may at any time before obtaining his deed, cause to be served a notice on any person despoiling such lands or interested in such despoliation, either personally or by leaving the same at the residence of such person, or with any member of his family of suitable age and discretion. The notice shall describe such lands, substantially as sold, shall state that it was sold for taxes by the comptroller, and that an action to recover the value of the buildings, timber or other products destroyed or removed therefrom, after the date of sale thereof, will be instituted against all persons concerned in such despoliation. If such lands shall not be redeemed, every person engaged or interested in making such despoliation, upon whom service of the notice shall have been made, shall be liable to pay to the holder of the tax sale certificate therefor the full value of any building so destroyed or removed therefrom, and of all the timber, bark, or

other products so cut or destroyed or removed therefrom, from the date of the sale of such land to the termination of such action, and may be restrained by injunction from committing any waste thereon.

[L. 1893, ch. 711, § 9,
without change.]

§ 130. Notice of unredeemed lands.—The comptroller shall, at least three months before the expiration of the one year allowed for the redemption of lands sold by him for taxes, cause a notice to be published once in each week for at least six weeks successively, the last publication to be at least six weeks before expiration of the year, in the newspapers designated by the board of supervisors of the county in which such lands are situated, to publish the session laws, containing a list of the lands in such county sold for taxes and unredeemed, specifying particularly every parcel unredeemed, and the amount necessary to redeem the same, calculated to the last day in which such redemption can be made, and stating that, unless such lands are redeemed by a certain day, they will be conveyed to the purchaser. If more than two newspapers in any county are designated in pursuance of law to publish the session laws, such publication shall be made in two of the newspapers so designated to be selected by the comptroller, representing different political parties. If no newspaper shall have been so designated in any county such publication shall be made in two newspapers in the county, to be selected by the comptroller, and if there shall not be two newspapers published in the county, then in two newspapers which the comptroller shall determine to be most generally circulated in such county, representing each of the political parties casting the largest number of votes therein at the general election next preceding such designation. The expense of such publication shall be audited and paid by the board of supervisors of the county in which such lands are situated.

[L. 1893, ch. 711, § 10, as amended by

L. 1895, ch. 895,

amended by providing that where more than two newspapers are designated to publish the session laws, the publication shall be made in but two papers, selected by the comptroller.

The legislature substituted the words at the end of the section “in which such lands are situated” for the words “where published.”]

§ 131. Comptroller's deed.—After the expiration of one year from the time of sale, the comptroller shall execute in the name of the people of the state, to the purchaser thereof, his heirs or assigns, a conveyance of any lands so sold by him for taxes and not redeemed, under his hand and official seal, and witnessed by the deputy comptroller, or state treasurer, which shall vest in the grantee an absolute estate in fee simple, subject to all claims which the state may have thereon for taxes or other liens or incumbrances, and which shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of the lands sold, and that all notices required by law to be given previous to the expiration of the time allowed by law for the redemption thereof, were regular and in accordance with all the provisions of law relating thereto. After two years from the date of such conveyance such presumption shall be conclusive. The comptroller may receive evidence of the loss or wrongful detention of any certificate, and on satisfactory proof of the fact may execute and deliver a deed to such person as may appear to be the rightful owner of such certificate.

[L. 1835, chap. 11; R. S., 8th ed., 1126,

L. 1893, ch. 711, § 11, as am. by

L. 1895, ch. 895,

without change.]

§ 132. Effect of former deeds.—Every such conveyance heretofore executed by the comptroller, county treasurer or county

judge and all conveyances of the same lands by his grantee or grantees therein named, which have for two years been recorded in the office of the clerk of the county in which the lands conveyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller, that shall have remained in force for two years after the last day allowed by law for redemption from such sale, shall be conclusive evidence that the sale and proceedings prior thereto, from and including the assessment of the lands, and all notices required by law to be given previous to the expiration of the time allowed for redemption, were regular and were regularly given, published and served according to the provisions of all laws directing and requiring the same or in any manner relating thereto, but all such conveyances and certificates, and the taxes and tax sales on which they are based, shall be subject to cancellation, by reason of the payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid, or by reason of any defect in the proceedings affecting the jurisdiction upon constitutional grounds, on direct application to the comptroller, or in an action brought before a competent court therefor; provided, however, that such application shall be made, or such action brought, in the case of all sales held prior to the year eighteen hundred and ninety-five, within one year from the passage of this act; and in the case of the sale of eighteen hundred and ninety-five and of all sales hereafter held, that such application shall be made, or such action brought, within five years from the expiration of the period allowed by law for the redemption of lands sold at the particular sale sought to be cancelled.

[L. 1893, ch. 711, § 12,

without change, as originally reported; but the legislature added the provision at the end of the section limiting the time within which applications must be made.]

§ 133. Possession of lands by the state.— The comptroller may advertise once a week, for at least three weeks successively, a list

of the wild, vacant and forest lands to which the state holds title, from a tax sale or otherwise, in one or more newspapers to be selected by him, published in the county in which the lands are situated, and from and after the expiration of such time, all such wild, vacant and forest lands are hereby declared to be and shall be deemed to be in the actual possession of the comptroller, and such possession shall be deemed to continue until he has been dispossessed by the judgment of a court of competent jurisdiction.

[L. 1893, ch. 711, § 13,
without change.]

§ 134. Notice to occupants.—If any lot or separate tract of land sold for taxes by the comptroller and conveyed, or any part thereof shall, at the time of the expiration of one year given for the redemption thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him shall within one year from the expiration of the time to redeem, serve a written notice on the person occupying such land, either personally or by leaving the same at the dwelling-house of the occupant, with a person of suitable age and discretion belonging to his family. The term “occupant” shall be construed to mean a person who has lawfully entered upon the land so occupied, and is in possession of the same to the exclusion of every other person. And the term “occupancy” shall mean the actual lawful and exclusive use and possession of such lands and premises by such an occupant. The notice shall state in substance, the sale and conveyance of the land, the person to whom made, the amount of consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum thereon, and of the sum paid for the deed, and that unless such consideration money and percentage with the sum paid for the deed, shall be paid into the state treasury for the benefit of the grantee, within six months after the time of filing in the comptroller’s office of the evidence of the service of such notice, the conveyance shall become absolute and the occupant and all others interested in the land

be forever barred from all right or title thereto. No conveyance made in pursuance of this section shall be recorded until the expiration of the time mentioned in such notice, and the evidence of the service of such notice shall be recorded with such conveyance.

[L. 1893, ch. 711, § 14,

without change, as originally reported. The legislature struck from the definition of "occupant" the words "has an actual domicile thereon."]

§ 135. Certificate of nonredemption and completion of title.—Within one month after the service of any such notice, the grantee or person claiming under him, in order to complete his title to the land conveyed shall file with the comptroller a copy of the notice served, with the affidavit of a person, certified as credible by the officer before whom the affidavit is taken, that the notice was duly served specifying the mode of service. If the comptroller shall be satisfied that the proper notice has been duly served, and if the moneys required for the redemption of such land shall not have been paid within the six months, he shall under his hand and official seal, certify such facts, and the conveyance before made shall thereupon become absolute and the occupant and all others interested in such lands shall be forever barred from all right and title thereto.

[L. 1893, ch. 711, § 15,

without change.]

§ 136. Redemption by occupant and certificate of redemption.—The occupant, or any other person having an interest therein at the time of the sale, may at any time within the six months mentioned in such notice redeem such land by paying into the treasury the consideration money with the addition of thirty-seven and one-half per centum thereon and the amount paid for the deed. Every such redemption shall be as effectual as if made before the expiration of the year allowed for the redemp-

tion of the land sold. [On application for such redemption the comptroller may appoint a commissioner to take all material evidence offered with reference to the occupation of the lands in question. The hearing shall be had in the county where the land is situated, on at least ten days' notice to the party applying for the redemption. The commissioner shall have the same power to issue subpoenas and proceed with the examination of witnesses under oath as is had by a referee in a court of record. His compensation shall not exceed six dollars per day and shall be taxed by the comptroller and paid upon his warrant by the treasurer. He shall report the testimony taken by him with his opinion thereon, to the comptroller for his decision.] In all cases of application for redemptions on the ground of occupancy, in which a part only of the separate lot or tract of land thus sold is occupied, the applicant shall be allowed to redeem only that particular part of the lot or tract sold which shall be actually occupied, used and possessed as herein defined, at the time of the expiration of the one year given for the redemption thereof; provided, that the notice required to be served upon such occupant by the purchaser at a tax sale, his grantee or person claiming under him, shall, in addition to other facts now required to be stated therein, contain a specific description of the particular part of the lot or tract sold which may be redeemed and the amount necessary to redeem the same. Such partial redemption may be allowed upon filing in the office of the comptroller, satisfactory evidence of such occupancy, and of the extent thereof, and by paying such proportion of the consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum of such amount and the further addition of the sum paid for the deeds, as the value of the lands and the premises occupied and sought to be redeemed bears to the value of the whole quantity of land sold; such value to be determined and fixed by the comptroller.

[L. 1893, ch. 711, § 16,

amended by omitting the matter in brackets. There is no necessity of a commissioner where notice is given to occupant.]

§ 137. Redemption by occupant before notice and effect of failure to redeem.—The occupant of any lot or separate tract of land sold for taxes by the comptroller, or any part thereof, or any person who had the title thereto or an interest therein at time of the sale may, at any time before the service of such notice by the purchaser or the person claiming under him and within two years from the expiration of the year allowed by law for the redemption thereof and not thereafter, redeem any lands so occupied, by filing in the office of the comptroller, satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold and thirty-seven and one-half per centum thereon, with the sum paid for the deed, if any. On application for such redemption the comptroller may appoint a commissioner to take all material evidence offered with reference to the occupation of the lands in question. The hearing shall be had in the county where the land is situated, on at least ten days' notice to the party applying for the redemption. The commissioner shall have the same power to issue subpoenas and proceed with the examination of witnesses under oath, as is had by a referee in a court of record. His compensation shall not exceed six dollars per day and shall be taxed by the comptroller and paid upon his warrant by the treasurer. He shall report the testimony taken by him with his opinion thereon, to the comptroller for his decision. **[The comptroller may appoint a commissioner to take evidence as provided by the last section.] Such occupant or other person shall also pay to the comptroller such amounts as may have been paid to the state for subsequent taxes thereon, or for redemption from subsequent tax sales thereof, and if such lot has been legally exempt from taxation for one or more years subsequent to the**

sale, a sum equal to the gross amount of taxes and interest which would have been due thereon, if it had been taxed during each of the years it was so exempt, on its assessed valuation, and at the rate per centum of taxation thereon for the year when last returned to the comptroller's office. In case of failure to redeem within the time herein specified, the sale and conveyance thereof shall become absolute and the occupant and all other persons barred forever.

[L. 1893, ch. 711, § 17, as am. by

L. 1895, ch. 895,

amended by substituting the matter underscored for the matter in brackets.]

§ 138. Lien of mortgage not affected by tax sale.— The lien of a mortgage, duly recorded or registered at the time of the sale of any lands for nonpayment of any tax or assessment thereon, shall not be destroyed, or in any manner affected, except as provided in this section. The purchaser at any such sale shall give to the mortgagee a written notice of such sale within one year from the expiration of the time to redeem, requiring him to pay the amount of purchase-money, with interest, within six months after giving the notice. Such notice may be given either personally or in the manner required by law in respect to notices of nonacceptance or nonpayment of notes or bills of exchange, and a notarial certificate thereof shall be presumptive evidence of the fact that may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as a deed or other evidence of title to real property.

[L. 1893, ch. 711, § 18, as am. by

L. 1895, ch. 895,

without change.]

§ 139. Redemption by mortgagee before notice.— The holder of any mortgage which is duly recorded at the time of the sale, may, at any time after the sale of all or any part of the mortgaged premises for unpaid taxes, and before the expiration of six

months from the giving of the notice required by this article to be given to a mortgagee, redeem the premises so sold or any part thereof from such sale. The redemption shall be made by filing with the comptroller a written description of his mortgage and by paying to the state treasurer, upon the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate allowed by law in case of redemption by occupants from the date of such certificate. The holder of such mortgage shall have a lien upon the premises redeemed for the amount so paid with interest from the time of payment, in like manner as if it had been included in the mortgage.

[L. 1893, ch. 711, § 19,
without change.]

§ 140. Cancellation of sales.—The comptroller shall not convey any lands sold for taxes if he shall discover before the conveyance, that the sale was for any cause invalid or ineffectual to give title to the lands sold; but he shall cancel the sale and forthwith cause the purchase-money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns. If the error originated with the county or town officers the sum paid shall be a charge against the county from which the tax was returned, and the board of supervisors thereof shall cause the same to be assessed, levied and collected and paid into the state treasury. If he shall not discover that the sale was invalid until after a conveyance of the lands sold shall have been executed he shall, on application of any person having any interest therein at the time of the sale, on receiving proof thereof, cancel the sale, refund out of the state treasury to the purchaser, his representatives or assigns, the purchase-money and interest thereon, and recharge the county from which the tax was returned, with the amount of purchase-money and interest from the time of sale, which the county shall cause to be levied and paid into the state treasury. On any such application the comptroller may appoint a commissioner

with like powers and duties as in case of an application for redemption; provided, however, that in any county which does not include a portion of the forest preserve, such application for cancellation may also be made by the owner of the lands at the time of the tax sale.

[L. 1893, ch. 711, § 20,

without change, as originally reported. The legislature added the clause at the end of the section allowing applications by owners in counties not including a portion of the forest preserve.]

§ 141. Setting aside cancellation of sale.—The comptroller shall have power to set aside any cancellation of sale made by him in either of the following cases:

First. When such cancellation was procured by fraud or misrepresentation.

Second. When it was procured by the suppression of any material fact bearing on the case.

Third. When it was made under a mistake of fact.

The comptroller shall in all cases specify the grounds upon which such cancellation is set aside.

[L. 1893, ch. 711, § 21,

without change.]

§ 142. Expenses of sale.—The expenses attending any sale for taxes under this article, including the expenses of printing and publishing lists and notices and transmitting copies thereof, and of all other things required to be done before the sale shall be had, shall be a charge on the lands liable to be sold; and the comptroller shall add to the taxes, interest and other charges on each parcel of land liable to be sold, an equal proportionate part of such expenses to be estimated by him.

[L. 1893, ch. 711, § 22,

amended by making the expenses a charge on the land "liable to be sold" instead of the land "sold." This restores the old law as it existed before 1893.]

§ 143. Payment of moneys into state treasury.— The moneys received upon any sale and interest under this article, and for the expenses of the sale shall be paid into the state treasury and the accounts of all persons entitled to any portion of the moneys so received for such expenses, shall be audited by the comptroller and paid out of the state treasury.

[L. 1893, ch. 711, § 23,
without change.]

ARTICLE VII.

Sales by County Treasurers for Unpaid Taxes and Redemption of Lands.

Section 150. When lands to be sold for unpaid taxes.

151. Advertisement and sale.

152. Redemption.

153. Conveyance by county treasurer.

154. Conveyance and its effect.

155. When purchase money to be refunded.

156. Lands which the state owns or upon which it has a
lien.

157. Provisions relative to comptroller to apply to
treasurer.

158. Article not to relate to certain cities.

§ 150. When lands to be sold for unpaid taxes.— Whenever any tax charged on nonresident real estate, not in a county including a portion of the forest preserve, is returned to the county treasurer, he shall not return the same to the comptroller, but if such tax, with interest thereon at the rate of ten per centum per annum, computed from the first day of February, after the same is levied, shall remain unpaid for six months from that date, such county treasurer shall advertise and sell such real estate as herein provided for the payment of such tax and interest and the expense of such sale. The expense of publication of the notice of sale and the list of lands to be sold and the expense of conducting the sale shall be a charge on the land liable to be sold and shall be added to the tax and interest.

[L. 1893, ch. 711, § 30,

The underscored matter is inserted for clearness, but effects no change in substance.]

§ 151. Advertisement and sale.— The county treasurer shall immediately after the expiration of such six months cause to be published at least once in each week for six weeks, in the two newspapers designated for the publication of the session laws, a list of real estate so liable to be sold, together with a notice that such real estate will, on a day at the expiration of said six weeks specified in such notice, and the succeeding days, be sold at public auction at the court house in the county where the same is situated, to discharge the taxes, interest and expenses that may be due thereon at the time of such sale. On the day mentioned in such notice the county treasurer shall begin the sale of said real estate and continue the same from day to day. The charge for publishing such notice shall be seventy-five cents per folio for the first insertion, and fifty cents per folio for each subsequent insertion. [The sale shall be conducted in the same manner and the treasurer have the same powers as in case of sale for taxes by the comptroller. The provisions relative to the conveyances and their effect, cancellation and redemption of lands in counties including the forest preserve are applicable to such sales except as hereinafter specifically provided.] The counties of the state other than those in the forest preserve are empowered to acquire and hold such lands, and after the time for redemption has expired, the county treasurer is authorized in the name of the board of supervisors of the county to sell and convey under his hand and seal such lands in the manner and upon such terms as the board of supervisors of the county may direct.

[L. 1893, ch. 711, § 31,

The matter in brackets is to be omitted as covered by the terms of § 157.

The bill as originally reported re-enacted L 1893, ch. 711, § 31, whereby the fee for publishing notice of sale was fixed at one dollar per parcel. The legislature substituted the provision, basing the expenses on the number of folios.]

§ 152. Redemption.— The owner, occupant or any other person having an interest in any real estate sold for taxes as aforesaid, may redeem the same at any time within one year after the last day of such sale, by paying to the county treasurer of the county, for the use of the purchaser, the sum mentioned in his certificate, together with interest thereon at the rate of ten per centum per annum, to be computed from the date of such certificate, and any tax which the holder of said certificate shall have paid between the days of sale and redemption.

[L. 1893, ch. 711, § 33,
without change.]

§ 153. Conveyance by county treasurer.— If such real estate, or any portion thereof, be not redeemed as herein provided, the county treasurer shall execute to the purchaser a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee, subject, however, to all claims the county or state may have thereon for taxes or other liens or incumbrances. The county treasurer shall receive from the purchaser fifty cents for preparing such conveyance, and ten cents additional for each piece or parcel of land described therein, exceeding the first. All purchases made for the county shall be included in one conveyance, for which the county treasurer shall receive ten dollars. Every such conveyance shall be executed by the treasurer of the county, under his hand and seal, and executed and acknowledged as other conveyances of real estate. Every certificate of conveyance executed by the county treasurer under this act may be recorded in the same manner and with like effect as a conveyance of real estate properly acknowledged or proven. The money received by the county treasurer on every such sale shall be applied by him, after deducting the expenses thereof, in like manner as if the same had been paid to him by the collectors of the several towns.

[L. 1893, ch. 711, § 34,
without change, as originally reported. The legislature changed the fees of the treasurer from one dollar for each conveyance to fifty cents for each conveyance and ten cents for each additional parcel.]

§ 154. Conveyance and its effect.—A purchaser or his legal representative may, upon receiving a conveyance under and by virtue thereof, possess and enjoy for his own use the real estate described in such conveyance, unless redeemed as herein provided, and after the expiration of the time to redeem the same, may cause the occupant of such real estate to be removed therefrom, and the possession to be delivered to him in the same manner and by the same proceedings, and before the same officers as in the case of a tenant holding over after the expiration of his term without permission of his landlord.

[L. 1893, ch. 711, § 32,
without change.]

§ 155. When purchase money to be refunded.—Whenever any purchaser under such sale shall be unable to regain possession of the real estate purchased by him by reason of error or irregularity in the assessment or levying of a tax, or in proceedings for the collection thereof, the board of supervisors of the county shall refund the purchase-money so paid, with interest upon the same being presented and audited as other county charges, and such moneys shall be charged over to the tax district where the irregularity arose.

[L. 1893, ch. 711, § 35,
without change.]

§ 156. Lands which the state owns or upon which it has a lien.—The county treasurer of any county not embracing a portion of the forest preserve shall, at least two months prior to any tax sale to be held by him, transmit to the comptroller an accurate and complete list of all the lands in such county to be sold thereat. The state comptroller shall, at least two weeks prior to any such tax sale, transmit to such county treasurer a list of all lands advertised to be sold at such tax sale, belonging to the state, or shall then be mortgaged to the commissioners for loaning certain moneys of the United States, or against which the state holds a bond or lien, for any part of the purchase-money thereof, or for

which the state may then hold a tax sale certificate. The county treasurer conducting such sale shall bid in for the state all lands described in the list transmitted to him by the comptroller, and shall, at the close of such sale, transmit to the comptroller a verified and itemized statement showing the amount of each bid made in the name of the state thereat, and the state comptroller shall, within ten days after the receipt by him of such statement, draw his warrant on the state treasurer for the amount thereof or credit the county with the amount of such statement on the books of his office.

【L. 1893, ch. 711, § 36,

without change, superseding

L. 1883, ch. 464; R. S., 8th ed., 1148.

The legislature, however, substituted L. 1883, ch. 464; and re-enacted the same without change of substance.】

§ 157. Provisions relative to comptroller to apply to treasurer.—The provisions of article 【one】 six of this act, entitled “sales by comptroller for unpaid taxes and redemption of lands” 【in counties including any portion of the forest preserve】 shall, in so far as it is not otherwise herein provided, govern and control the action of the county treasurer, who shall perform the duties therein devolved upon the comptroller and the same rights and remedies shall be deemed to exist under the provisions of this article as are provided for in said article 【one】 six.

【L. 1893, ch. 711, § 37,

without change of substance.】

§ 158. Article not to relate to certain cities.—This or the preceding article shall not affect any law relating to the sale of real estate for taxes in any city.

【L. 1893, ch. 711, § 38,

without change of substance.】

tion of the land sold. [On application for such redemption the comptroller may appoint a commissioner to take all material evidence offered with reference to the occupation of the lands in question. The hearing shall be had in the county where the land is situated, on at least ten days' notice to the party applying for the redemption. The commissioner shall have the same power to issue subpoenas and proceed with the examination of witnesses under oath as is had by a referee in a court of record. His compensation shall not exceed six dollars per day and shall be taxed by the comptroller and paid upon his warrant by the treasurer. He shall report the testimony taken by him with his opinion thereon, to the comptroller for his decision.] In all cases of application for redemptions on the ground of occupancy, in which a part only of the separate lot or tract of land thus sold is occupied, the applicant shall be allowed to redeem only that particular part of the lot or tract sold which shall be actually occupied, used and possessed as herein defined, at the time of the expiration of the one year given for the redemption thereof; provided, that the notice required to be served upon such occupant by the purchaser at a tax sale, his grantee or person claiming under him, shall, in addition to other facts now required to be stated therein, contain a specific description of the particular part of the lot or tract sold which may be redeemed and the amount necessary to redeem the same. Such partial redemption may be allowed upon filing in the office of the comptroller, satisfactory evidence of such occupancy, and of the extent thereof, and by paying such proportion of the consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum of such amount and the further addition of the sum paid for the deeds, as the value of the lands and the premises occupied and sought to be redeemed bears to the value of the whole quantity of land sold; such value to be determined and fixed by the comptroller.

[L. 1893, ch. 711, § 16,

amended by omitting the matter in brackets. There is no necessity of a commissioner where notice is given to occupant.]

§ 137. Redemption by occupant before notice and effect of failure to redeem.—The occupant of any lot or separate tract of land sold for taxes by the comptroller, or any part thereof, or any person who had the title thereto or an interest therein at time of the sale may, at any time before the service of such notice by the purchaser or the person claiming under him and within two years from the expiration of the year allowed by law for the redemption thereof and not thereafter, redeem any lands so occupied, by filing in the office of the comptroller, satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold and thirty-seven and one-half per centum thereon, with the sum paid for the deed, if any. On application for such redemption the comptroller may appoint a commissioner to take all material evidence offered with reference to the occupation of the lands in question. The hearing shall be had in the county where the land is situated, on at least ten days' notice to the party applying for the redemption. The commissioner shall have the same power to issue subpoenas and proceed with the examination of witnesses under oath, as is had by a referee in a court of record. His compensation shall not exceed six dollars per day and shall be taxed by the comptroller and paid upon his warrant by the treasurer. He shall report the testimony taken by him with his opinion thereon, to the comptroller for his decision. [The comptroller may appoint a commissioner to take evidence as provided by the last section.] Such occupant or other person shall also pay to the comptroller such amounts as may have been paid to the state for subsequent taxes thereon, or for redemption from subsequent tax sales thereof, and if such lot has been legally exempt from taxation for one or more years subsequent to the

sale, a sum equal to the gross amount of taxes and interest which would have been due thereon, if it had been taxed during each of the years it was so exempt, on its assessed valuation, and at the rate per centum of taxation thereon for the year when last returned to the comptroller's office. In case of failure to redeem within the time herein specified, the sale and conveyance thereof shall become absolute and the occupant and all other persons barred forever.

[L. 1893, ch. 711, § 17, as am. by
L. 1895, ch. 895,
amended by substituting the matter underscored for the matter in brackets.]

§ 138. Lien of mortgage not affected by tax sale.—The lien of a mortgage, duly recorded or registered at the time of the sale of any lands for nonpayment of any tax or assessment thereon, shall not be destroyed, or in any manner affected, except as provided in this section. The purchaser at any such sale shall give to the mortgagee a written notice of such sale within one year from the expiration of the time to redeem, requiring him to pay the amount of purchase-money, with interest, within six months after giving the notice. Such notice may be given either personally or in the manner required by law in respect to notices of nonacceptance or nonpayment of notes or bills of exchange, and a notarial certificate thereof shall be presumptive evidence of the fact that may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as a deed or other evidence of title to real property.

[L. 1893, ch. 711, § 18, as am. by
L. 1895, ch. 895,
without change.]

§ 139. Redemption by mortgagee before notice.—The holder of any mortgage which is duly recorded at the time of the sale, may, at any time after the sale of all or any part of the mortgaged premises for unpaid taxes, and before the expiration of six

months from the giving of the notice required by this article to be given to a mortgagee, redeem the premises so sold or any part thereof from such sale. The redemption shall be made by filing with the comptroller a written description of his mortgage and by paying to the state treasurer, upon the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate allowed by law in case of redemption by occupants from the date of such certificate. The holder of such mortgage shall have a lien upon the premises redeemed for the amount so paid with interest from the time of payment, in like manner as if it had been included in the mortgage.

[L. 1893, ch. 711, § 19,
without change.]

§ 140. Cancellation of sales.—The comptroller shall not convey any lands sold for taxes if he shall discover before the conveyance, that the sale was for any cause invalid or ineffectual to give title to the lands sold; but he shall cancel the sale and forthwith cause the purchase-money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns. If the error originated with the county or town officers the sum paid shall be a charge against the county from which the tax was returned, and the board of supervisors thereof shall cause the same to be assessed, levied and collected and paid into the state treasury. If he shall not discover that the sale was invalid until after a conveyance of the lands sold shall have been executed he shall, on application of any person having any interest therein at the time of the sale, on receiving proof thereof, cancel the sale, refund out of the state treasury to the purchaser, his representatives or assigns, the purchase-money and interest thereon, and recharge the county from which the tax was returned, with the amount of purchase-money and interest from the time of sale, which the county shall cause to be levied and paid into the state treasury. On any such application the comptroller may appoint a commissioner

case such hearing shall be had at a time and place to be fixed by the board upon notice of at least twenty days by mail to the party appealing and to the clerk of the board of supervisors of the county in which the appeal is taken. If the appellant or his successor fails to appear at the time and place appointed or upon any day to which such hearing and trial shall be adjourned, the board shall make an order dismissing the appeal, which shall have the same effect as if the appeal had not been sustained after a hearing on the merits.

[L. 1876, ch. 49, §§ 1, 2; R. S., 8th ed., 1113,
amplified but not changed in substance.]

§ 176. Determination of appeals.—On every such hearing or trial, the board of tax commissioners shall determine whether any, and if any, what deductions ought to be made from the aggregate corrected value of the real and personal property of such tax district as made and to what tax district or districts in such county the amount of such deductions, if any, shall be added; and shall certify their determination, in writing, to such board of supervisors and forward the same by mail within ten days thereafter to the clerk of the board, directed to him at his post-office address and forward a copy thereof to the supervisor appealing. Such determination shall be carried into effect by such board at its next annual session.

[L. 1876, ch. 49, § 3; R. S., 8th ed., 1113,
L. 1859, ch. 312, § 13; R. S., 8th ed., 1110, as am. by
L. 1895, ch. 608,
without change in substance.]

§ 177. Costs on appeal.—The board of tax commissioners shall certify the reasonable expense on every such appeal, not exceeding the sum of two thousand dollars, for services of counsel and one thousand dollars for all other expenses, including the compensation and expense of the stenographer. If such appeal is not sustained, the costs and expenses thereof so certified shall be a charge upon the tax district or districts taking

such appeal and shall be levied thereon by the board of supervisors. If the appeal is sustained, the amount of such costs and expenses so certified shall be levied by the board of supervisors upon, and collected from, the county in the assessment and collection of taxes for the current year, except the tax district or tax districts whose appeal is sustained. If there shall be appeals by more than one tax district in the county, some of which are sustained and some dismissed, the state board shall decide what portion of such costs and expenses shall be borne by any tax district whose appeal is dismissed.

[L. 1859, ch. 312, § 15; R. S., 8th ed., 1110,
L. 1874, ch. 351, § 2; R. S., 8th ed., 1112,
without change of substance, except that the amount of expenses is limited to \$1,000.

This note refers to the bill as originally reported. The legislature fixed the amount at \$2,000 for services of counsel, and \$1,000 for all other expenses.]

ARTICLE IX.

Corporation Tax.

Section 180. Organization tax.

181. License tax on foreign corporations.

182. Franchise tax on corporations.

183. Certain corporations exempted from tax on capital stock tax.

184. Additional franchise tax on transportation and transmission corporations and associations.

185. Franchise tax on elevated railroads or surface railroads not operated by steam.

186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.

187. Franchise tax upon insurance corporations.

188. Tax upon foreign bankers.

189. Report of corporations.

190. Value of stock to be appraised.

Section 191. Further requirements as to reports of corporations.

192. Powers of comptroller to examine into affairs of corporations.

193. Notice of statement of tax; interest.

194. Payment of tax and penalty for failure.

195. Revision and readjustment of accounts by comptroller.

196. Review of determination of comptroller by certiorari.

197. Regulations as to such writ of certiorari.

198. Warrant for the collection of taxes.

199. Information of delinquents.

200. Action for recovery of taxes; forfeiture of charter of delinquent corporations.

201. Reports to be made by the secretary of state.

202. Exemptions from other state taxation.

203. Application of tax.

Section 180. Organization tax.—Every stock corporation incorporated under any law of this state shall pay to the state treasurer a tax of one-eighth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the state treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to

building, mutual loan, accumulating fund and co-operative associations.

**[L. 1886, ch. 143; R. S., 8th ed., 1159, as amended by
L. 1892, ch. 668; R. S., 8th ed., supp., 3257,
Banking Law, § 187, as amended by
L. 1894, ch. 705,
without change of substance.]**

§ 181. License tax on foreign corporations.—Every foreign corporation, joint stock company or association, except banking, fire, marine, casualty and life insurance companies, and corporations wholly engaged in carrying on manufactures in this state, co-operative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the state treasurer, for the use of the state, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital stock employed by it within this state during the first year of carrying on its business in this state. No action shall be maintained or recovery had in any of the courts in this state by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the state.

[L. 1895, ch. 240.

This section embodies the substance of L. 1895, ch. 240, as to corporations hereafter commencing business within the state. It is not wise to repeal chapter 240 until corporations that have heretofore commenced business shall have paid the tax imposed thereby.

The words “ joint stock company or association ” were added by the legislature.]

§ 182. Franchise tax on corporations.—Every corporation, joint stock company or association incorporated, organized or formed

under, by or pursuant to law in this state, shall pay to the state treasurer annually, an annual tax to be computed upon the basis of the amount of its capital stock employed within this state and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within this state bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within the state.

If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon, amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum.

Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country, shall pay a like tax for the privilege of exercising

its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.

[L. 1882, ch. 361, § 3; R. S., 8th ed., 1153, as am. by
L. 1890, ch. 522; R. S., 8th ed., supp., 3255,
L. 1882, ch. 361, § 11; R. S., 8th ed., 1155, as am. by
L. 1894, ch. 562.

This section changes the system of taxing corporations, which declare a dividend of less than six per centum, by imposing a tax of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within the state bears to the entire capital of the corporation. Heretofore such corporations were taxed in the same manner as corporations which declared no dividend.]

§ 183. Certain corporations exempt from tax on capital stock.—Banks, saving banks, institutions for savings, insurance or surety corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corporations wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas or for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. This exemption shall not be construed to include title guaranty or trust companies.

[L. 1881, ch. 361, § 3; R. S., 8th ed., 1153, as am. by
L. 1890, ch. 522; R. S., 8th ed., supp., 3255,
without change of substance, as originally reported.

Several important changes were made by the legislature. All insurance corporations, including surety companies, are exempted from the capital stock tax. Fire, marine and casualty companies,

life insurance corporations and foreign insurance corporations were heretofore expressly exempted, and it was deemed advisable to bring all insurance corporations under one system of taxation, as provided by § 187.

A second important change was made as to manufacturing corporations. The court of appeals has held that under the language of the present law a manufacturing corporation is entitled to no exemption if it is lawfully conducting any business, however slight, which is not manufacturing. (*People ex rel. Western Electric Company v. Campbell*, 145 N. Y., 587.) The legislature amended the section so as to exempt such a corporation to the extent of its capital engaged in manufacturing or in the sale of the products of such manufacture.

In view of §§ 185 and 186, the legislature also exempted from the capital stock tax imposed by § 182, elevated railroads, surface railroads not operated by steam, water, gas, electric, steam-heating, lighting or power corporations.]

§ 184. Additional franchise tax on transportation and transmission corporations and associations.— Every corporation and joint-stock association formed for steam surface railroad, canal, steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the state, which shall include its gross earnings from its transportation or transmission business originating and terminating within this state, but shall not include earnings derived from business of an interstate character. All settlements for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the

accounts for taxation under section six of chapter three hundred and sixty-one of the laws of eighteen hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

[L. 1881, ch. 361, § 6; R. S., 8th ed., 1155,

L. 1881, ch. 361, § 11; R. S., 8th ed., 1156, as am. by

L. 1894, ch. 562,

without change of substance, as originally reported. The legislature, however, excepted from the section elevated railroads and street surface railroads not operated by steam, a new system for taxing such corporations being provided by § 185. The legislature also added to the corporations subject to the tax "transfer" and "baggage express" corporations.]

§ 185. Franchise tax on elevated railroads or surface railroads not operated by steam.— Every corporation, joint-stock company or association operating any elevated railroad or surface railroad not operated by steam shall pay to the state for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity within this state, an annual tax which shall be one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association. Any corporation, joint-stock company or association taxed under this section which has paid a tax to the state for the year ending November first, eighteen hundred and ninety-five, under section three of chapter five hundred and forty-two of the laws of eighteen hundred and eighty, as amended by chapter five hundred and twenty-two of the laws of eighteen hundred and ninety, shall be credited by the comptroller with one-third of the amount so paid in computing the taxes to be paid for the year ending June thirtieth, eighteen hundred and ninety-six.

[This section is new and was added by the legislature. Such corporations heretofore paid a capital stock tax, based on dividends and also a tax of one-half of one per centum of the gross earnings. Section 183 exempts such corporations from the dividend tax, and hereafter they will be subject to this tax only.]

§ 186. Franchise tax on water-works companies; gas companies, electric or steam heating, lighting and power companies.— Every corporation, joint-stock company or association formed for supplying water or gas, or for electric or steam heating, lighting or power purposes, shall pay to the state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual tax which shall be five-tenths of one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association.

[This section is new and was added by the legislature. Such corporations heretofore paid a capital stock tax only, based upon dividends. Section 183 exempts them from such tax and they are now subject to this tax only.]

§ 187. Franchise tax upon insurance corporations.— Every insurance or surety corporation doing business in this state shall annually pay a tax into the treasury of the state for the privilege of exercising its corporate franchises in this state, at the rate of five-tenths of one per centum upon the gross amount of premiums received for business done in this state by such company or association, person or partnership whether such premiums were in the form of money, notes, credits or any other substitute for money. Life insurance corporations and purely mutual benefit associations, whose funds for the benefit of members, their families or heirs, are made up entirely of contributions of their members and the accumulated interest thereon, shall be exempt from the tax fixed by this section. The term "insurance corporation," as used in this article, shall include all persons and partnerships doing an insurance business in this state.

[L. 1881, ch. 361, § 5; R. S., 8th ed., 1154, as am. by L. 1895, ch. 425,

L. 1886, ch. 679, § 1; R. S., 8th ed., 1696, as am. by L. 1895, ch. 418,

This section, as amended by the legislature, imposes on insurance and surety corporations a uniform tax of one-half of one per centum of the gross premiums. Surety corporations heretofore paid a capital stock dividend tax. Fire, marine and casualty insurance corporations of this state and of foreign countries paid a tax of one-half of one per centum on their gross premiums from business done within the state. Prior to L. 1886, ch. 679, fire and marine insurance corporations of other states were subject to a tax of eight-tenths of one per centum of the premiums received for business done within the state. Since that act, however, they have been exempt from any gross premium tax. This section reimposes on such corporations a premium tax of one-half of one per centum of the gross premiums received for business done within the state. New York fire insurance corporations believe that this legislation will result in retaliatory legislation in other states, and it is probable that the matter will receive the early attention of the legislature of 1897; and it is possible that the system of exempting such corporations will be restored.]

§ 188. Tax upon foreign bankers.— Every foreign banker doing business in this state, shall annually pay to the treasurer a tax of one-half of one per centum on his business done in this state, to be ascertained as follows: By first computing the daily average, for each month, of the moneys outstanding upon loans, and of all other moneys received, used or employed in connection with its or their business done in this state by such banker, and by then dividing the aggregate of such monthly averages by the number of months for which such banker shall, during the year preceding, have been engaged in the business of banking in this state.

The term, doing a banking business, as used in this section, means doing any such business as a corporation may be created

to do under article two of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this state, as used in this section, includes:

1. Every foreign corporation doing a banking business in this state, except a national bank.

2. Every unincorporated company, partnership or association, of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

3. Every other unincorporated company, partnership or association, of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this state.

4. Every nonresident of this state, doing a banking business in this state, in his own name and right only.

[L. 1882, ch. 409, § 321; R. S., 8th ed., 1592, as am. by L. 1894, ch. 196, without change of substance.]

§ 189. Reports of corporations.—Corporations liable to pay a tax under this article shall report as follows:

1. Corporations paying franchise tax.—Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. Transportation and transmission corporations.—Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this state.

3. Elevated and surface railroad corporations.—Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

4. Water-works, gas, electric, steam heating, lighting and power corporations.—Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

5. Insurance corporations.—Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the entire amount

of premiums received on business done thereby in this state during the year ending with such day, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

6. Foreign bankers.— Every foreign banker liable to pay a tax under section one hundred and eighty-eight of this chapter shall, on or before February first in each year, make a written report to the comptroller of the condition of his business on December thirty-first preceding, stating the amount of tax for which he is liable under this article, and giving in detail the facts required by the last preceding section for the purpose of ascertaining and computing the same.

[L. 1881, ch. 361, § 1; R. S., 8th ed., 1152,

L. 1881, ch. 361, § 5; R. S., 8th ed., 1154, as am. by L. 1895, ch. 425,

L. 1881, ch. 361, § 7; R. S., 8th ed., 1155,

L. 1882, ch. 409, § 322; R. S., 8th ed., 1582, as am. by L. 1894, ch. 196,

L. 1886, ch. 679, § 2; R. S., 8th ed., 1696,

without change of substance, as originally reported. The section was divided into subdivisions by the legislature and subdivisions added fixing the dates for reports from corporations taxable under the new §§ 185 and 186.]

§ 190. Value of stock to be appraised.—In case no dividend has been declared, by a corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company, shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and

returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the state.

[L. 1881, ch. 361, § 1; R. S., 8th ed., 1152,
without change of substance.]

§ 191. Further requirements as to report of corporations.— Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

[L. 1881, ch. 361, § 1; R. S., 8th ed., 1152,
L. 1881, ch. 361, § 5; R. S., 8th ed., 1154, as am. by
L. 1895, ch. 425,
L. 1881, ch. 361, § 7; R. S., 8th ed., 1155,
L. 1882, ch. 409, § 322; R. S., 8th ed., 1582, as am. by
L. 1894, ch. 196,
L. 1886, ch. 679, § 2; R. S., 8th ed., 1696,
without change of substance, except that all reports are
required to be verified.]

§ 192. Powers of comptroller to examine into affairs of corporation. — In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid by such

corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the state from such corporation, association, joint-stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the state, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

[L. 1881, ch. 361, §§ 1, 11, 12, 13; R. S., 8th ed., 1152, L. 1882, ch. 409, §§ 322, 323; R. S., 8th ed., 1582, as am. by L. 1895, ch. 196, without change of substance. The power to subpoena witnesses and the punishment for contempt provided by L. 1881, ch. 361, § 13, is fully covered by code civil procedure, § 854ff.]

§ 193. Notice of statement of tax; interest.— Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited

and stated shall bear interest upon the total amount found due thereon to the state, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

[L. 1885, ch. 501, §§ 15, 16; R. S., 8th ed., 1157, without change of substance, but extended to foreign bankers taxable under the article.]

§ 194. Payment of tax and penalty for failure.—A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam, or by section one hundred and eighty-seven of this chapter on an insurance corporation, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the state treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint-stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dol-

lars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint-stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

[L. 1881, ch. 361, §§ 4, 5, 6, 7; R. S., 8th ed., 1154,
L. 1882, ch. 409, § 322; R. S., 8th ed., 1582, as am. by
L. 1895, ch. 196,
L. 1886, ch. 679, § 1; R. S., 8th ed., as am. by
L. 1895, ch. 418,

The existing law in each instance imposes a penalty of ten per centum if the tax is not paid within thirty days after it becomes due. This section of the revision imposes a penalty of five per centum if the tax is not paid within thirty days after it becomes due, and one per centum for each month throughout the calendar year, and interest, if not paid during such year.]

§ 195. Revision and readjustment of accounts by comptroller.—The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts, and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. The comptroller shall forthwith send written notice of its determination upon such application to the applicant, which notice may be sent by mail to his post-office address.

[L. 1881, ch. 361, § 19; R. S., 8th ed., supp. 3257, as added,
L. 1889, ch. 463,

without substantial change, except that the readjustment must be within one year after notice of the audit of the account has been served on the person or corporation, instead of "at any time."]

§ 196. Review of determination of comptroller by certiorari.—The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the supreme court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf of the people of the state. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the supreme court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the supreme court upon any such review, an appeal to the court of appeals may be taken by either party.

[L. 1881, ch. 361, § 20; R. S., 8th ed., supp., 3257, as added,
L. 1889, ch. 463,
without change of substance.]

§ 197. Regulations as to such writ of certiorari.—No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest

and other charges, audited and stated in such account, must be deposited with the state treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

[L. 1881, ch. 361, § 17; R. S., 8th ed., 1158,
without change of substance.]

§ 198. Warrant for the collection of taxes.— After the expiration of thirty days from the sending by the comptroller of a notice of a settlement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the state treasurer, if an appeal or other proceedings have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the state treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

**[L. 1885, ch. 501, § 18; R. S., 8th ed., p. 1158,
L. 1882, ch. 409, § 322; R. S., 8th ed., 1582, as am. by
L. 1894, ch. 196,
without change of substance.]**

§ 199. Information of delinquents.—It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the state, with such information as may be in his possession as may lead to the recovery of any taxes due the state therefrom. If, in his opinion, the interests of the state require it, the comptroller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such report and such services, as shall have been agreed upon between such person and the comptroller or attorney-general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

**[L. 1886, ch. 266, all; R. S., 8th ed., 1158,
without change of substance.]**

§ 200. Action for recovery of taxes; forfeiture or charter of delinquent corporation.—An action may be brought by the attorney-general, at the instance of the comptroller, in the name of the state, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the

attorney-general, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled.

【L. 1881, ch. 361, § 2; R. S., 8th ed., 1153,
L. 1882, ch. 409, § 322; R. S., 8th ed., 1582, as amended by
L. 1894, ch. 196,
L. 1886, ch. 679, § 3; R. S., 8th ed., 1696,
without change of substance.】

§ 201. Reports to be made by the secretary of state.— The secretary of state shall transmit on the first day of each month to the comptroller, a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this state, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the state. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of state shall make like reports to the comptroller whenever required by him relating to any such corporations whose certificates have been filed or to whom a certificate of authority has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

【New, in substitution for L. 1881, ch. 166; R. S., 8th ed., 937, which requires each supervisor to report to the comptroller a list of corporations doing business in his town.】

§ 202. Exemptions from other state taxation.— The personal property of every corporation, company, association or partnership taxable under this article, other than for an organization

tax, shall be exempt from assessment and taxation upon its personal property for state purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article.

**[L. 1881, ch. 361, § 8; R. S., 8th ed., 1155,
L. 1886, ch. 679, § 4; R. S., 8th ed., 1696, as amended by
L. 1891, ch. 218,
without change of substance.]**

§ 203. Application of taxes.—The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

**[L. 1881, ch. 361, § 9; R. S., 8th ed., 1155,
L. 1886, ch. 679, § 5; R. S., 8th ed., 1696,
L. 1882, ch. 409, § 327; R. S., 8th ed., 1583,
without change of substance.]**

ARTICLE X.

Taxable Transfers.

Section 220. Taxable transfers.

221. Exceptions and limitations.

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223. Discount, interest and penalty.

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242. Definitions.

[This article is a re-enactment of the taxable transfer act of 1892 (L. 1892, ch. 399,) without change except as indicated at the end of the sections.]

Section 220. Taxable transfers.— A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

2. When the transfer is by will or intestate law, of property within the state, and the decedent was a nonresident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident, when such nonresident's property is within this

state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section.

§ 221. Exceptions and limitations.— When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor or to any person to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation shall be exempted from and not subject to the provisions of this act.

§ 222. Lien of tax and payment thereof.— Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer or comptroller of the county of the surrogate having jurisdiction as herein provided;

and said treasurer or comptroller shall give, and every executor, administrator or trustee shall take duplicate receipts from him of such payment, one of which he shall immediately send to the comptroller of the state, whose duty it shall be to charge the treasurer or comptroller so receiving the tax with the amount thereof and to seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act unless he shall produce a receipt so sealed and countersigned by the comptroller or a copy thereof certified by him, or unless a bond shall have been filed as prescribed by section two hundred and twenty-six of this chapter. All taxes imposed by this article shall be due and payable at the time of the transfer; provided, however, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

§ 223. Discount, interest and penalty.—If such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reasons of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax can not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after

which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section two hundred and twenty-six of this chapter, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of payment thereof.

§ 224. Collection of tax by executors, administrators and trustees.—Every executor, administrator or trustee, shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasury or comptroller, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 225. Refund of tax erroneously paid.—If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, comptroller of the city of New York, or to the state treasurer, or by such treasurer, comptroller or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the comptroller of this state, upon satisfactory proof presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error, from the treasury; or the said comptroller may, by order, direct and allow the treasurer of any county or the comptroller of the city of New York to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody, to the credit of such taxes, and credit himself with the same in his quarterly account rendered to the comptroller of this state under this article; provided, however, that all applications for such refunding of erroneous taxes shall be made within five years from the payment thereof.

§ 226. Deferred payment.—Any person or corporation beneficially interested in any property chargeable with a tax under this article, and executors, administrators and trustees thereof may elect within one year from the date of the transfer thereof, as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in penalty of three times the amount of any such tax, with such sureties as the surrogate of the proper county may approve, conditioned

for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate. Such bond must be executed and filed and a full return of such property upon oath made to the surrogate within one year from the date of transfer thereof as herein provided, and such bond must be renewed every five years.

§ 227. Taxes upon devises and bequests in lieu of commissions.— If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised, above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

§ 228. Liability of certain corporations to tax.— If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the comptroller of the city of New York on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent unless notice of the time and place of such intended transfer be served upon the county treasurer or comptroller at least five days prior to the said transfer. And it shall be lawful for the said county treasurer or comptroller, personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render said safe deposit company, trust company, bank or other institution, person or persons liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this article.

§ 229. Jurisdiction of the surrogate.— The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogate's courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the county treasurer or comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to such county treasurer or comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the county treasurer or comptroller were a creditor of the decedent.

§ 230. Appointment of appraisers.— The surrogate, upon the application of any interested party, including county treasurers, or the comptroller of New York city, or upon his own motion, shall, as often as and whenever occasion may require, appoint a competent person as appraiser, to fix the fair market value, at the time of the transfer thereof of property of persons whose estates shall be subject to the payment of any tax imposed by this article. If the property upon the transfer of which a tax is imposed shall

be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the fair and clear market value thereof at that time; provided, however, that when such estate, income or interest shall be of such a nature that its fair and clear market value can not be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future, or contingent or limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies; except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum.

Whenever an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such limitation.

[The last sentence is new — added at the suggestion of the comptroller.]

§ 231. Proceedings by appraisers.— Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the county treasurer or comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concern-

ing such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as said surrogate may order or require. Every appraiser shall be paid on the certificate of the surrogate at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer or comptroller out of any funds he may have in his hands on account of any tax imposed under the provisions of this article.

§ 232. Determination of surrogate.—The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller. [filed in the office of the surrogate and] From such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser. The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The comptroller of the state of New York or any person dissatisfied with the appraisement or assessment and determination of tax, may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the

appeal is taken. The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all parties known to be interested therein, including the state comptroller. Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the comptroller of the state may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively, or erroneously made, make application to a justice of the supreme court of the judicial district in which the former owner of such estate resided, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive the compensation provided by sections two hundred and thirty and two hundred and thirty-one of this article. Such compensation shall be payable by the county treasurer or comptroller, out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller.

[L. 1892, ch. 399, § 13; R. S., 8th. ed., supp. 3558 as am. by
L. 1895, ch. 556,

The amendment of this section, requiring reports of appraisers to be also filed in the office of the state comptroller, is new and is made on the suggestion of the comptroller.]

§ 233. Surrogate's and district attorney's assistants in New York city and Erie county.—The comptroller of the city and county of New York shall retain, out of any funds he may have in

his hands on account of said tax, a sum of money sufficient to provide the surrogates in the city and county of New York with an assistant, appointed by said surrogates, who shall be known as the transfer tax assistant, whose salary shall be four thousand dollars a year; a transfer tax clerk, whose salary shall be two thousand four hundred dollars a year; an assistant clerk, whose salary shall be one thousand eight hundred dollars a year, and a recording clerk, whose salary shall be one thousand three hundred dollars a year, said salaries to be paid monthly; and a further sum of money, not exceeding five hundred dollars a year, to be used to pay the expenses of the said surrogates, necessarily incurred in the assessment and collection of said tax, said amounts to be paid upon the certificates and requisitions of said surrogates respectively. The comptroller of the city and county of New York shall also retain, out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the city and county of New York with an assistant, appointed by said district attorney, who shall be known as the transfer tax assistant, whose salary shall be three thousand dollars a year; a transfer tax clerk whose salary shall be two thousand four hundred dollars a year, and a surrogate's process server, whose salary shall be one thousand two hundred dollars a year, said salary to be payable monthly; and a further sum of money not exceeding five hundred dollars a year, to be used to pay the expenses of the said district attorney, for the conduct and prosecution of the proceedings mentioned in section two hundred and thirty-five of this chapter, said amounts to be paid upon the certificate and requisition of said district attorney. The county treasurer of the county of Erie shall also retain out of any funds he may have in his hands on account of said tax, a sum of money sufficient to provide the district attorney in the county of Erie with an assistant, appointed by the said district attorney, who shall be known as the transfer tax assistant, whose salary shall be two thousand dollars a year, said salary to be paid monthly.

[L. 1892, ch. 399, § 14; R. S., 8th ed., supp., 3558, as am. by L. 1895, ch. 515, without change.]

§ 234. Surrogate's assistants in Kings county.—The county treasurer of the county of Kings shall, from time to time, retain out of any funds which he may have in his hands, on account of taxes collected under this article, a sum of money sufficient to provide the surrogate of the county of Kings with an assistant, to be known as the transfer tax assistant and a transfer tax clerk. Such assistants shall be appointed by the surrogate, and the transfer tax assistant shall receive an annual salary of four thousand dollars, and the transfer tax clerk, an annual salary of two thousand dollars. Such salaries shall be payable monthly. Such county treasurer shall also retain, out of such funds, a further sum not exceeding five hundred dollars in any one year, for the necessary expenses of such surrogate, in the assessment and collection of such tax. Such salaries and said amount shall be paid upon the certificates and requisitions of such surrogate, respectively.

[L. 1893, ch. 199, without change.]

§ 235. Proceedings for the collection of taxes.—If the treasurer or comptroller of any county shall have reason to believe that any tax is due and unpaid under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time,

manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney, treasurer or comptroller of the county or the comptroller of the state, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the treasurer or comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the treasurer or the comptroller of a county all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or comptroller is cited as a party under sections two hundred and thirty and two hundred and thirty-one of this article, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or comptroller therein, and to direct such county treasurer or comptroller to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax. And the comptroller of the state is hereby authorized, with the approval of the attorney-general, and a justice of the supreme court of the judicial district in which the former owner resided, to compromise and settle the amount of such tax in any case where con-

troversies have arisen or may hereafter arise as to the relationship of the beneficiaries to the former owner thereof.

[L. 1892, ch. 399, § 15; R. S., 8th ed., supp. 3559, as am. by L. 1895, ch. 378, without change.]

§ 236. Receipt from the county treasurer and comptroller. — Any person shall upon the payment of the sum of fifty cents be entitled to a receipt from the county treasurer of any county or the comptroller of the city of New York, or at his option to a copy of a receipt that may have been given by such treasurer or comptroller for the payment of any tax under this article, under the official seal of such treasurer or comptroller, which receipt shall designate upon what real property, if any, of which any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipt may be recorded in the clerk's office of the county in which such property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

§ 237. Fees of county treasurer and comptroller. — The treasurer of each county and the comptroller of the city and county of New York, shall be allowed to retain on all taxes paid and accounted for by him each year, under this article, five per centum on the first fifty thousand dollars, three per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers, except that in the counties of Erie and Monroe such per centum shall be credited to and belong to the county where collected.

[L. 1892, ch. 399, § 17; R. S., 8th ed., supp. 3559, as am by L. 1893, ch. 704, without change.]

§ 238. Books and forms to be furnished by the state comptroller. — The comptroller of the state shall furnish to each surrogate, a

book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places, residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

§ 239. Reports of surrogate and county clerk.—Each surrogate shall, on January, April, July and October first of each year, make a report in duplicate, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, one of which shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller. The county clerk of each county shall, at the same times, make reports in duplicate, containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death

of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, one of which duplicates shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller.

§ 240. Reports of county treasurer and of the comptroller of the city of New York.—Each county treasurer and the comptroller of the city of New York shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

§ 241. Application of taxes.—All taxes levied and collected under this article shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ 242. Definitions.—The words “estate” and “property,” as used in this article, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this article and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state, over which this state has any jurisdiction for the purposes of taxation. The word “transfer,” as used in this article, shall be taken to include the passing of property or

any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer," "comptroller" and "district attorney," as used in this article shall be taken to mean the treasurer, comptroller or district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-nine of this article.

ARTICLE XI.

Procedure.

Section 250. Contents of petition.

251. Allowance of writ of certiorari.

252. Return of writ.

253. Proceeding upon return.

254. Costs.

255. Appeals.

256. Refund of tax paid upon illegal, erroneous or unequal assessment.

257. When county court may apportion tax.

258. Application to county court where taxpayer has removed from the county.

259. Supplementary proceedings to collect a tax.

260. Power of county court when collector fails to pay over.

261. Payment of moneys collected.

262. Collection of deficiency from collector's bondsmen.

263. Attorney-general to bring action for sequestration.

264. Settlement of conflicting claims to surplus of tax sale.

Section 250. Contents of petition.—Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the supreme court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the

extent of such overvaluation, or if unequal in that the assessment has been made at a higher proportionate valuation than the assessment of other property on the same roll by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

[L. 1880, ch. 269, § 1; R. S., 8th ed., 1114,
without change of substance.]

§ 251. Allowance of writ of certiorari.—Such petition must be presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ shall be returnable to a special term of the supreme court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or other persons to whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

[L. 1880, ch. 269, §§ 1-3; R. S., 8th ed., 1114.

The bill, as originally reported, allowed the application to be made to the special term only. The legislature amended the section by allowing application to be made to a justice of the supreme court of the district as well as to the special term. This

was a restoration of L. 1880, ch. 269, § 2. The legislature also added the provision that the writ should be returnable at a special term of the judicial district.】

§ 252. Return to writ.—The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the value of the property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

【L. 1880, ch. 269, § 3; R. S., 8th ed., 1114,
without change of substance.】

§ 253. Proceedings upon return.—If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if illegal, to be stricken from the roll, or if erroneous or unequal, it may order a reassessment of the property of the petitioner, or the correction of his assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court, that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. A new assessment or correction of an assessment made by order of the court shall have the same force and effect as if it had been so made by the proper officers within the time prescribed by law for making such assessment.

[L. 1880, ch. 269, §§ 4, 5; R. S., 8th ed., 1114, without change of substance, as originally reported. The legislature amended the section by requiring the referee to report findings of fact and conclusions of law. Heretofore referees have reported the evidence merely.]

§ 254. Costs.—Costs shall not be allowed against the officers whose proceedings may be reviewed under any such writ unless it shall appear to the court, that they acted with gross negligence or in bad faith or with malice in making the assessment complained of. If the writ shall be quashed or the prayer of the petitioner denied, costs shall be awarded against the petitioner, not exceeding the costs and disbursements taxable in an action upon the trial of an issue of fact in the supreme court.

[L. 1880, ch. 269, § 6; R. S., 8th ed., 1115, without change of substance.]

§ 255. Appeals.—An appeal may be taken by either party from an order, judgment or determination under this article as from an order, and it shall be heard and determined in like manner as appeals in the supreme court from orders. All issues and appeals in any proceeding under this article shall have preference over all other civil actions and proceedings in all courts.

[L. 1880, ch. 269, § 7; R. S., 8th ed., 1115, without change of substance.]

§ 256. Refund of tax paid upon illegal, erroneous or unequal assessment.—If in a final order in any such proceeding it shall be ordered or adjudged that the assessment complained of was illegal, erroneous or unequal, and such order shall not be made in time to enable the assessors or other officers to make a new or corrected assessment for the use of the board of supervisors, then at the first annual session of the board of supervisors after such correction there shall be audited and allowed to the petitioner and included in the tax levy of such town, village or city, made next after the entry of such order, and paid to the

petitioner, the amount paid by him, in excess of what the tax would have been if the assessment had been made as determined by such order of the court, together with interest thereon from the date of payment. In case the amount deducted from such assessment by such order exceeds ten thousand dollars, so much thereof as shall be refunded by reason of such corrected assessment, other than the proportion or percentage thereof collected for such town, village or city purposes, shall be levied upon the county at large and paid to the petitioner without further audit. The board of supervisors shall audit and levy upon such town, village or city, the proportion or percentage of such excess of tax collected for such town, village or city purposes, which shall be collected and paid to the petitioner without other or further audit.

[L. 1880, ch. 269, § 8; R. S., 8th ed., 1115,
without change of substance.]

§ 257. When county court may apportion tax.—When the premises of one person shall have been wrongfully assessed and taxed in with the premises of another, the person aggrieved thereby may, upon application to the county court of the county in which the property is situated, on petition duly verified, and on eight days' notice to the assessors of the town in which the premises are situated, and to the party whose premises are included in such wrongful assessment, have such assessment and tax apportioned by such county court. The county court shall take such evidence as may be necessary to determine the facts, and shall fix and specify the amount of the assessment and tax properly chargeable to the petitioner's property, and to the other party chargeable therewith. The collector of the town, upon receiving a copy of the order of the county court, shall forthwith change the assessment-roll and tax to conform to such order, and shall receive the amount apportioned upon the premises of the petitioner in full for the tax upon such property.

[L. 1875, ch. 331; R. S., 8th ed., 1113,
without change of substance.]

§ 258. Application to county court where taxpayer has removed from the county.— If it shall satisfactorily appear by affidavit to the county court of any county that a tax legally levied therein, except upon real property of nonresidents, can not be collected because of the removal of the person taxed to any other county of the state, such court shall, upon application of the collector of any tax district or of the county treasurer of the county, grant an order, directed to the sheriff of the county where such person may be, to collect the same out of his personal property, with interest at the rate of eight per centum per annum from the date of said order. Such order shall be filed in the office of the clerk of the county in which it is granted, and a certified copy thereof delivered to the constable or sheriff of the county where the person liable for the tax may be, and such constable or sheriff, on receiving the same shall execute it, and make a like return, and be entitled to the same fees and subject to the same liabilities and penalties for neglect as upon execution from any court of record. The sheriff receiving such moneys shall pay the same to the county treasurer of the county where it was levied, to the credit of the town in which it was assessed. This provision shall also apply to taxes levied upon rents reserved as upon personal property where such taxes remain unpaid.

[L. 1836, ch. 461; R. S., 8th ed., 1120,

L. 1846, ch. 327, §§ 4-7; R. S., 8th ed., 1107,


L. 1880, ch. 448; R. S., 8th ed., 1162,

The original law authorizes the county treasurer to issue a warrant directly to the sheriff without an order of the court.]

§ 259. Supplementary proceedings to collect tax.— If a tax exceeding ten dollars in amount levied against a person or corporation is returned by the proper collector uncollected for want of personal property out of which to collect the same, the supervisor of the town or ward, or the county treasurer or the president of the village, if it is a village tax, may, within one year thereafter, apply to the court for the institution of proceedings supplementary to execution, as upon a judgment docketed in

such county, for the purpose of collecting such tax and fees, with interest thereon from the fifteenth day of February after the levy thereof. Such proceedings may be taken against a corporation, and the same proceedings may thereupon be had in all respects for the collection of such tax as for the collection of a judgment by proceedings supplementary to execution thereon against a natural person, and the same costs and disbursements may be allowed against the person or corporation examined as in such supplementary proceedings but none shall be allowed in his or its favor. The tax, if collected in such proceeding, shall be paid to the county treasurer or to the supervisor of the town, and if a village tax, to the treasurer of the village. The costs and disbursements collected shall belong to the party instituting the proceedings, and shall be applied to the payment of the expense of such proceeding. The president of a village and a county treasurer shall have no compensation for any such proceeding. A supervisor shall have no other compensation except his per diem pay for time necessarily spent in the proceeding.

§ 260. Power of county court when collector fails to pay over.— If any collector shall neglect or refuse to pay over the moneys collected by him, to any of the persons to whom he is required to pay the same by his warrant, or to account for the same as unpaid, the county court, on proof of such fact by affidavit, on application of the county treasurer, shall make an order directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid by such collector out of his property, personal and real, and pay the same to the county treasurer, within sixty days from the date of such order. The sheriff shall cause the same to be executed, and pay to the county treasurer the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. If the whole sum due from the collector, or if a part only, or if no part thereof, shall be collected, the sheriff shall state the fact in his return, which shall be made as in the case of an execution, and the county treasurer shall give notice to the supervisor of



the town, city or division thereof, of any amount which may remain due from such collector. If the sheriff shall neglect to execute the order, or to pay over the money collected thereon, within the time limited thereby, he shall be liable therefor as in case of an execution, and the county treasurer shall immediately prosecute such sheriff and his sureties for the sum due from him, which sum when collected shall be paid into the county treasury.

[R. S., pt. I, ch. 13, tit. III, §§ 13, 14, 15, 17, 18, 19, 8th ed., 1119, L. 1862, ch. 194; R. S., 8th ed., 1123.]

The original law authorizes the treasurer to issue his warrant to the sheriff without an order of the court. The original requires notice of neglect of sheriff to be given by the treasurer to the comptroller, and by the comptroller to the attorney-general.]

§ 261. Payment of moneys collected.—The county treasurer shall pay over the moneys received from the sheriff upon such order in the manner directed by the warrant to the collector. If the whole amount of moneys due from the collector shall not be collected on such warrant, or otherwise, the county treasurer shall first retain the amount which ought to have been paid to him before making any payment to the town officers.

[R. S., pt. I, ch. 13, tit. III, § 14; 8th ed., 1119, without change of substance.]

§ 262. Collection of deficiency from collector's bondsmen.—If it appears that the whole or any part of the moneys due from the collector has not been thus collected, the county treasurer shall forthwith give notice to the supervisor of the town or ward of the amount still due from such collector. The supervisor shall forthwith cause the undertaking of the collector to be prosecuted, and shall be entitled to recover thereon, the sum due from the collector with costs of the action. The moneys received shall be applied and paid by the supervisor in the same manner as they should have been by the collector.

[R. S., pt. I, ch. 13, tit. III, §§ 15, 16; 8th ed., 1119, without change of substance.]

§ 263. Attorney-general to bring action for sequestration.— It shall be the duty of the attorney-general, on being informed by the comptroller or by the county treasurer of any county that any incorporated company refuses or neglects to pay the taxes imposed upon it, pursuant to articles one and two of this chapter, to bring an action in the supreme court for the sequestration of the property of such corporation and the court may so sequester the property of such corporation for the purpose of satisfying taxes in arrear, with the costs of prosecution, and may, also, in its discretion, enjoin such corporation and further proceedings under its charter until such tax and the costs incurred in the action shall be paid. The attorney-general may recover such tax with costs from such delinquent corporation by action in any court of record.

[R. S., pt. I, ch. 13, tit. IV, §§ 21, 23; 8th ed., 1151, L. 1857, ch. 456, § 6; R. S., 8th ed., 1087, without change of substance. The legislature added the words “pursuant to articles I and II of this chapter.”]

§ 264. Settlement of conflicting claims to surplus of tax sale.— Whenever a surplus from the sale of any property, for unpaid taxes in the hands of the supervisor of a town, shall be claimed by any person, other than the person for whose tax such property was sold, and such claim shall not be settled by a stipulation filed with the supervisor, as provided by this chapter, such claimant may maintain an action against such person, or such person may maintain an action against such claimant, to recover such money and, for the purposes of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the supervisor. Upon the production of a certified copy of a final judgment, rendered in favor of either party, the supervisor shall pay such surplus to the party recovering the same. No other cause of action shall be joined, nor any set-off or counter-claim be allowed in an action brought pursuant to this section, and if an execution issue on a judgment rendered in such action, it shall direct that the costs only of such judgment be levied thereon.

[R. S., pt. III, ch. 8, tit. XVII, §§ 28-30; 8th ed., 2727, without change of substance.]

ARTICLE XII.

Laws Repealed; When to Take Effect.

Section 280. Laws repealed:

281. When to take effect.

§ 280. Laws repealed.—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 281. When to take effect.—This chapter shall take effect June fifteenth, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

| Revised Statutes. | | Sections. |
|---------------------------------|----------|-----------------------------|
| Part I, ch. 13..... | | All, except § 7 of tit. VI. |
| Part III, ch. 8, tit. XVII..... | | §§ 28, 29, 30. |
| Laws of— | Chapter. | Sections. |
| 1835..... | 11..... | All. |
| 1836..... | 461..... | All. |
| 1841'..... | 341..... | All. |
| 1842..... | 154..... | All. |
| 1842..... | 318..... | All. |
| 1845..... | 180..... | 29, 30, 31, 32. |
| 1846..... | 327..... | All. |
| 1847..... | 455..... | 16. |
| 1847..... | 482..... | All. |
| 1849..... | 180..... | All. |
| 1851..... | 176..... | All. |
| 1851..... | 371..... | All. |
| 1852..... | 46..... | All. |
| 1852..... | 282..... | All. |
| 1853..... | 69..... | All. |
| 1853..... | 406..... | All. |
| 1853..... | 469..... | All. |
| 1854..... | 393..... | All. |
| 1855..... | 37..... | All. |

| Laws of— | Chapter. | Sections. |
|-----------------|----------|---|
| 1855..... | 83..... | All. |
| 1855... | 327..... | All. |
| 1855..... | 427..... | All. |
| 1856..... | 183..... | All. |
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| 1892..... | 565..... | All. |
| 1892..... | 661..... | All. |
| 1892..... | 668..... | All. |
| 1892..... | 713..... | All. |
| 1892..... | 714..... | All. |
| 1893..... | 199..... | All. |
| 1893..... | 498..... | All. |
| 1893..... | 525..... | All. |
| 1893..... | 704..... | All. |
| 1893..... | 711..... | All. |
| 1894..... | 196..... | All. |
| 1894..... | 312..... | All. |
| 1894..... | 562..... | All. |
| 1894..... | 713..... | All. |
| 1895..... | 378..... | All. |
| 1895..... | 418..... | All. |
| 1895..... | 425..... | All. |
| 1895..... | 515..... | All. |
| 1895..... | 556..... | All. |
| 1895..... | 558..... | All. |
| 1895..... | 608..... | All. |
| 1895..... | 895..... | All. |
| Fisheries, Game and Forest Law..... | | 274. |

| Laws repealed. | R. S. 8th ed., page. | Secs. of Revisions. | Notes. |
|---|-------------------------|-----------------------------------|---|
| L. 1882, ch. 151..... | 1156 | ..... | Amendatory. |
| L. 1882, ch. 409, § 312..... | 1580 | 13,24,26 | |
| L. 1882, ch. 409, § 313, as am. by L. 1892, ch. 714..... | 1580 | 23..... | |
| L. 1882, ch. 409, § 314, as am. by L. 1892, ch. 714..... | 1580 | 72..... | |
| L. 1882, ch. 409, § 315, as am. by L. 1892, ch. 714..... | 1580 | 72..... | |
| L. 1882, ch. 409, § 316..... | 1581 | ..... | Omitted. |
| L. 1882, ch. 409, § 317..... | 1581 | ..... | Temporary. |
| L. 1882, ch. 409, §§ 318-19.... | 1581 | ..... | Omitted as un- necessary. See § 13 of revision. |
| L. 1882, ch. 409, § 320..... | 1581 | 14, 15.. | |
| L. 1882, ch. 409, § 321, as am. by L. 1894, ch. 196..... | 1582 | 186.... | |
| L. 1882, ch. 409, § 322, as am. by L. 1894, ch. 196..... | 1582 | 187, 190 192, 194 198, 200. | |
| L. 1882, ch. 409, § 323, as am. by L. 1894, ch. 196..... | 1582 | 192.... | |
| L. 1882, ch. 409, § 324..... | 1582 | 182, 183 | |
| L. 1882, ch. 409, § 325..... | 1582 | ..... | Omitted as un- necessary. |
| L. 1882, ch. 409, § 326..... | 1582 | ..... | Omitted. See § 4, subd. 7. |
| L. 1882, ch. 409, § 327..... | 1583 | ..... | Omitted as un- necessary. |
| L. 1882, ch. 342, §§ 1-2..... | 1095 | 10..... | |
| L. 1883, ch. 342, § 3..... | 1095 | ..... | Temporary. |
| L. 1883, ch. 392, § 1..... | 1095 | 3..... | |
| L. 1883, ch. 392, § 2..... | 1096 | 8..... | |
| L. 1883, ch. 397..... | 1083 | ..... | Amendatory. |
| L. 1883, ch. 464..... | 1148 | 156..... | |

| Laws repealed. | R. S. 8th ed., page. | Secs. of Revisions. | Notes. |
|--|-------------------------|------------------------|---|
| L. 1884, ch. 57..... | 1100 | ..... | Amendatory. |
| L. 1884, ch. 153..... | .... | ..... | Lewis Co. act. Repealed with- out re-enact- ment. |
| L. 1884, ch. 280..... | 1110 | 171, 177 | |
| L. 1884, ch. 414..... | 1326 | ..... | Amendatory. |
| L. 1884, ch. 353..... | 1711 | 4 sub.16 | |
| L. 1884, ch. 435..... | 1108 | ..... | Amendatory. |
| L. 1884, ch. 537..... | 1083 | ..... | Amendatory. |
| L. 1885, ch. 10, § 1..... | 1122 | 85..... | |
| L. 1885, ch. 10, § 2..... | 1123 | ..... | Temporary. |
| L. 1885, ch. 32..... | 1123 | ..... | Amendatory. |
| L. 1885, ch. 201..... | 1100 | ..... | Amendatory. |
| L. 1885, ch. 215..... | .... | ..... | Amendatory. |
| L. 1885, ch. 340..... | 1100 | ..... | Amendatory. |
| L. 1885, ch. 359..... | 1154 | ..... | Amendatory. |
| L. 1885, ch. 411..... | 1101 | ..... | Repealed. Ap- plied to Kings Co. only. After Jan. 1, 1896, there will be no towns in Kings Co. Erie Co. now comes within the pop- ulation limita- tion. |
| L. 1885, ch. 453..... | 1130 | ..... | Amendatory. |
| L. 1885, ch. 501..... | 1156 | ..... | Amendatory. |
| L. 1886, ch. 102..... | .... | ..... | Amendatory. |
| L. 1886, ch. 143, as am. by L. 1892, ch. 668..... | 1159 | 180.... | |
| L. 1886, ch. 266..... | 1158 | 199.... | |

| Laws repealed. | R. S. 8th ed., page. | Secs. of Revisions. | Notes. |
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| L. 1886, ch. 315..... | 1094 | | Amendatory. |
| L. 1886, ch. 659, §§ 1-2..... | 2066 | 11..... | |
| L. 1886, ch. 659, § 3..... | 2066 | 74..... | |
| L. 1886, ch. 659, § 4..... | 2066 | | Repealed by L. 1892, ch. 686. |
| L. 1886, ch. 659, § 5..... | 2067 | 73..... | |
| L. 1886, ch. 659, § 6..... | 2067 | 74..... | |
| L. 1886, ch. 679, § 1, as am. by L. 1895, ch. 418..... | 1696 | 187, 194 | |
| L. 1886, ch. 679, § 2..... | 1696 | 189, 191 | |
| L. 1886, ch. 679, § 4, as am by L. 1886, ch. 679, § 2..... | 1696 | 200.... | |
| L. 1886, ch. 679, § 3..... | 1696 | 202.... | |
| L. 1886, ch. 679, § 5..... | 1696 | ..... | Omitted in terms. |
| L. 1887, ch. 284..... | 1159 | ..... | Amendatory. |
| L. 1887, ch. 342..... | 1115 | ..... | Amendatory. |
| L. 1888, ch. 110..... | .... | ..... | Amendatory. |
| L. 1889, ch. 191..... | 3358 | ..... | See § 4, sub. 7, and § 220. |
| L. 1889, ch. 193..... | .... | ..... | Amendatory of L. 1881, ch. 361, § 3. |
| L. 1889, ch. 353..... | .... | ..... | Amendatory of L. 1881, ch. 361, § 3. |
| L. 1889, ch. 462..... | 3246 | ..... | Amendatory of L. 1875, ch. 466. |
| L. 1889, ch. 463..... | 3256 | ..... | Amendatory of L. 1881, ch. 361, §§ 19, 20. |
| L. 1889, ch. 469..... | 3406 | ..... | Temporary and obsolete. |
| L. 1889, ch. 563..... | 3254 | ..... | Obsolete. |

| Laws repealed. | R. S. 8th ed., page. | Secs. of Revisions. | Notes. |
|-----------------------|-------------------------|------------------------|---|
| L. 1890, ch. 145..... | 3252 | ..... | Amendatory of R. S., pt. I, ch. 13, tit. III, § 10. |
| L. 1890, ch. 174..... | 3250 | ..... | Amendatory of R. S., pt. I, ch. 13, tit. II, § 12. |
| L. 1890, ch. 206..... | 3252 | ..... | Amends L.1855, ch. 427, § 44. The original section was re- pealed, 1893, ch. 711, and the substance of this act re- enacted in such chapter. |
| L. 1890, ch. 497..... | ..... | ..... | Amendatory of L. 1889, ch. 191, § 1. |
| L. 1890, ch. 522..... | 3255 | ..... | Amendatory of L. 1881, ch. 361, § 3. |
| L. 1890, ch. 553..... | ..... | ..... | Amendatory of L. 1889, ch. 191, § 1. |
| L. 1890, ch. 556..... | 3253 | ..... | Amends L.1855, ch. 427, § 74; which was re- pealed by L. 1893, ch. 711, and the sub- stance of this amendment re- enacted. |

| Laws repealed. | R. S. 8th ed., page. | Secs. of Revisions. | Notes. |
|----------------------------|-------------------------|------------------------|---|
| L. 1891, ch. 163..... | 3246 | ..... | Amendatory of R. S., pt. I, ch. 3, tit. I; § 4. |
| L. 1891, ch. 211..... | 3503 | 137, 140 | |
| L. 1891, ch. 218..... | 3288 | ..... | Amendatory of L. 1866, ch. 679, § 4. |
| L. 1892, ch. 196..... | 3251 | ..... | Amendatory of R. S., pt. I, ch. 13, tit. III, § 2. |
| L. 1892, ch. 202..... | 3250 | ..... | Amends R. S., pt. I, ch. 13, tit. II, § 9, and L. 1885, ch. 411, § 4. |
| L. 1892, ch. 266..... | 3253 | ..... | Amends L. 1855, ch. 427, § 61, which was re- pealed by L. 1893, ch. 711, and the sub- stance re-enact- ed. |
| L. 1892, ch. 347..... | 3254 | ..... | Amends L. 1855, ch. 427, § 74, which was re- pealed by L. 1893, ch. 711. |
| L. 1892, ch. 399, § 1..... | 3553 | 220.... | |
| L. 1892, ch. 399, § 1..... | 3554 | 221.... | |
| L. 1892, ch. 399, § 3..... | 3554 | 222.... | |
| L. 1892, ch. 399, § 4..... | 3555 | 223.... | |
| L. 1892, ch. 399, § 5..... | 3555 | 224.... | |
| L. 1892, ch. 399, § 6..... | 3555 | 225.... | |
| L. 1892, ch. 399, § 7..... | 3556 | 226.... | |

| Laws repealed. | R. S., 8th ed., page. | Secs. of Revisions. | Notes. |
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| L. 1892, ch. 399, § 8..... | 3556 | 227.... | |
| L. 1892, ch. 399, § 9..... | 3556 | 228.... | |
| L. 1892, ch. 399, § 10..... | 3557 | 229.... | |
| L. 1892, ch. 399, § 11..... | 3557 | 230.... | |
| L. 1892, ch. 399, § 13, as am. by L. 1895, ch. 566..... | 3558 | 232.... | |
| L. 1892, ch. 399, § 14, as am. by L. 1895, ch. 515..... | 3558 | 233.... | |
| L. 1892, ch. 399, § 15, as am. by L. 1895, ch. 378..... | 3559 | 235.... | |
| L. 1892, ch. 399, § 16..... | 3559 | 236.... | |
| L. 1892, ch. 399, § 17, as am. by L. 1893, ch. 704..... | 3559 | 237.... | |
| L. 1892, ch. 399, § 18..... | 3560 | 238.... | |
| L. 1892, ch. 399, § 19..... | 3560 | 239.... | |
| L. 1892, ch. 399, § 20..... | 3560 | 240.... | |
| L. 1892, ch. 399, § 21..... | 3560 | 240.... | |
| L. 1892, ch. 399, § 22..... | 3561 | 241.... | |
| L. 1892, ch. 463..... | 3583 | ..... | Omitted as tem- porary. |
| L. 1892, ch. 477..... | 3585 | ..... | Omitted as tem- porary. |
| L. 1892, ch. 529..... | 3609 | ..... | Omitted as tem- porary. |
| L. 1892, ch. 565..... | 3246 | ..... | Amends R. S., pt. I, ch. 3, tit. I, § 4, by add- ing subd., § 11. |
| L. 1892, ch. 661..... | 3247 | ..... | Amendatory of L. 1881, ch. 433, § 1. |
| L. 1892, ch. 668..... | 3257 | ..... | Amendatory of L. 1886, ch. 143, § 1. |

| Laws repealed. | R. S., 8th ed., page. | Secs. of Revisions. | Notes. |
|--|--------------------------|------------------------|--|
| L. 1892, ch. 713..... | 3246 | ..... | Amendatory of R. S., pt. I, ch. 13, tit. I. § 4. |
| L. 1892, ch. 714..... | 3285 | ..... | Amendatory of L. 1882, ch. 409, §§ 313-15. |
| L. 1893, ch. 199..... | | 234.... | |
| L. 1893, ch. 498..... | | 4, sub. 7 | |
| L. 1893, ch. 525..... | | | Temporary. |
| L. 1893, ch. 704..... | | | Amendatory of L. 1892, ch. 399, § 17. |
| L. 1893, ch. 711, § 1, as am. by L. 1895, ch. 895..... | | 120.... | |
| L. 1893, ch. 711, § 2..... | | 121.... | |
| L. 1893, ch. 711, § 3, as am. by L. 1895, ch. 895..... | | 122.... | |
| L. 1893, ch. 711, § 4..... | | 124.... | |
| L. 1893, ch. 711, § 5..... | | 125.... | |
| L. 1893, ch. 711, § 6, as am. by L. 1895, ch. 895..... | | 126.... | |
| L. 1893, ch. 711, § 7..... | | 127.... | |
| L. 1893, ch. 711, § 8..... | | 128.... | |
| L. 1893, ch. 711, §§ 9, 10, as am. by L. 1895, ch. 895..... | | 130.... | |
| L. 1893, ch. 711, § 11, as am. by L. 1895, ch. 895..... | | 131.... | |
| L. 1893, ch. 711, § 12..... | | 132.... | |
| L. 1893, ch. 711, § 13..... | | 133.... | |
| L. 1893, ch. 711, § 14..... | | 134.... | |
| L. 1893, ch. 711, § 15..... | | 135.... | |
| L. 1893, ch. 711, § 16..... | | 136.... | |
| L. 1893, ch. 711, § 17, as am. by L. 1895, ch. 895..... | | 137.... | |

| Laws repealed. | R. S., 8th ed., page. | Secs. of Revisions. | Notes. |
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| L. 1893, ch. 711, § 18, as am. by | | | |
| L. 1895, ch. 895..... | | 138.... | |
| L. 1893, ch. 711, § 19..... | | 139.... | |
| L. 1893, ch. 711, § 20..... | | 140.... | |
| L. 1893, ch. 711, § 21..... | | 141.... | |
| L. 1893, ch. 711, § 22..... | | 142.... | |
| L. 1893, ch. 711, § 23..... | | 143.... | |
| L. 1893, ch. 711, § 20..... | | 150.... | |
| L. 1893, ch. 711, § 31..... | | 151.... | |
| L. 1893, ch. 711, § 32..... | | 154.... | |
| L. 1893, ch. 711, § 33..... | | 152.... | |
| L. 1893, ch. 711, § 34..... | | 153.... | |
| L. 1893, ch. 711, § 35..... | | 155.... | |
| L. 1893, ch. 711, § 36..... | | 156.... | |
| L. 1893, ch. 711, § 37..... | | 157.... | |
| L. 1893, ch. 711, § 38..... | | 158.... | |
| L. 1894, ch. 196..... | | | Amendatory of L. 1882, ch. 409, §§ 321-23. |
| L. 1894, ch. 312..... | | | Temporary. |
| L. 1894, ch. 362..... | | | Amendatory of L. 1881, ch. 361, § 11. |
| L. 1895, ch. 240..... | | 181.... | The act is not repealed. |
| L. 1895, ch. 378..... | | | Amendatory of L. 1892, ch. 399, § 15. |
| L. 1895, ch. 395, § 274..... | | 22, 80.. | |
| L. 1895, ch. 418..... | | | Amendatory of L. 1886, ch. 679, § 1. |
| L. 1895, ch. 425..... | | | Amendatory of L. 1881, ch. 361, § 5. |

| Laws repealed. | R. S., 8th ed., page. | Secs. of Revisions. | Notes. |
|-----------------------|--------------------------|------------------------|--|
| L. 1895, ch. 515..... | | | Amendatory of L. 1892, ch. 399, § 14. |
| L. 1895, ch. 556..... | | | Amendatory of L. 1892, ch. 399, § 13. |
| L. 1895, ch. 558..... | | 91..... | |
| L. 1895, ch. 608..... | | | Amendatory of L. 1859, ch. 312, § 13. |
| L. 1895, ch. 895..... | | | Amendatory of L. 1893, ch. 711, §§ 1, 3, 6, 10, 11, 17, 18. |

THE STATE CHARITIES LAW.

THE STATE CHARITIES LAW.

[This bill became chap. 546 of the Laws of 1896.]

REVISERS' NOTE EXPLANATORY OF THE STATE CHARITIES LAW.

We submit for the consideration of the Legislature the accompanying chapter of the revision, to be known as the "State Charities Law," and to constitute chapter twenty-six of the general laws. This chapter embraces all the existing law relating to the organization, powers and duties of the State Board of Charities, the finances of State charitable institutions, and the acts creating such institutions, regulating the management and prescribing the treatment and control of the inmates thereof.

By chapter thirteen of the laws of eighteen hundred and ninety-five, the Comptroller is given the same power to revise and approve the estimates for expenditures of State charitable institutions as is possessed by the State Commission in Lunacy over expenditures made by State hospitals for the care of the insane, under the provisions of chapter two hundred and fourteen of the laws of eighteen hundred and ninety-three, and chapter three hundred and fifty-eight of the laws of eighteen hundred and ninety-four. In article three of this chapter, we have provided a method of approving and revising such estimates following that laid down in chapter two hundred and fourteen of the laws of eighteen hundred and ninety-three.

In section two a State charitable institution is defined as "an institution of a charitable, eleemosynary, correctional or reformatory character, supported, in whole or in part, by the State, except institutions for the instruction of the deaf and dumb, and the blind and such institutions, which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the Commission in Lunacy, or of the prison commission, whether

managed or controlled by the State or by private corporations, societies or associations." This chapter does not therefore, apply to the State hospitals for the insane, which are under the supervision of the Commission in Lunacy, nor the State reformatory at Elmira, which, by the constitution, is expressly placed under the supervision of the prison commission, and made a part of the State prison system.

The State Industrial School at Rochester, the House of Refuge for Juvenile Delinquents at Randall's Island, and the Houses of Refuge for Women at Hudson, Albion and Bedford, are institutions of a correctional and reformatory character, and by the constitution (art. VIII, § 11,) are subject to the inspection and visitation of the State Board of Charities. It was not intended to make these institutions a part of the State prison system; they are, therefore, still to be regarded as State charitable institutions, and the acts relating thereto are included in this chapter. The Reformatory for Women at Bedford is not yet completed, and there are no inmates therein. The acts creating the House of Refuge at Hudson and Albion and the Reformatory for Women at Bedford (L. 1891, ch. 187, as amended by L. 1892, ch. 784, L. 1890, ch. 238, and L. 1892, ch. 637,) are similar. By laws of eighteen hundred and ninety-two, chapter six hundred and thirty-seven it is provided that women from sixteen to thirty years of age may be committed to the Bedford Reformatory for a misdemeanor or felony, other than murder, manslaughter, burglary or arson. A woman can not be committed to either of the other institutions for a felony. It is proposed that no women shall be committed to either of such institutions for a felony, that all commitments thereto be made for certain specified offenses and also for all misdemeanors.

There are few changes made in the law by this revision. It has not been deemed expedient to alter the present methods of managing these institutions. The few changes made are for the sake of clearness of expression. The object sought is the inclusion in a single chapter of our general laws of all the existing statutes relating to the supervision and control of affairs of insti-

tutions created for the care, support and improvement of certain classes of dependents which the State, in its wisdom, has assumed. This chapter, and the Insanity Law, previously reported to this Legislature, contain all the statutes relating to the support and management of charitable institutions created by the State for the custody, treatment, education and reformation of the dependent persons described therein.

Respectfully submitted,

CHARLES G. LINCOLN,

A. JUDD NORTHRUP,

WILLIAM H. JOHNSON,

Commissioners of Statutory Revision.

THE STATE CHARITIES LAW.

AN ACT relating to state charities, constituting chapter twenty six of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XXVI OF THE GENERAL LAWS.

State Charities Law.

- Article**
- I. State board of charities. (§§ 1-18.)**
 - II. State charities aid association. (§§ 30-32.)**
 - III. Regulations of finances of state charitable institutions, reports to and accounts against municipalities. (§§ 40-47.)**
 - IV. Syracuse state institution for feeble-minded children. (§§ 60-70.)**
 - V. State custodial asylum for feeble-minded women. (§§ 80-83.)**
 - VI. Rome state custodial asylum. (§§ 90-94.)**
 - VII. The Craig colony for epileptics. (§§ 100-114.)**
 - VIII. Institutions for juvenile delinquents. (§§ 120-130.)**
 - IX. Houses of refuge and reformatories for women. (§§ 140-153.)**
 - X. Thomas asylum for orphan and destitute Indian children. (§§ 160-165.)**
 - XI. Laws repealed; when to take effect. (§§ 170-171.)**

ARTICLE I.

State Board of Charities.

- Section**
- 1. Short title.**
 - 2. Definitions.**
 - 3. State board of charities.**
 - 4. Officers of the board.**

- Section** 5. Compensation and expenses of commissioners.
6. Meetings and effect of nonattendance.
 7. Office room and supplies.
 8. Official seal, certificates and subpoenas.
 9. General powers and duties of board.
 10. Visitations, inspection and supervision of institutions.
 11. Powers and duties of boards on visits and inspections.
 12. Investigations of institutions.
 13. Orders of board directed to institutions.
 14. Correction of evils in administration of institutions.
 15. Duties of the attorney-general and district attorney.
 16. State, nonresident and alien poor.
 17. Reports of state board of charities.
 18. Institutions for the deaf and dumb and the blind.

Section 1. Short title.— This chapter shall be known as the state charities law.

§ 2. Definitions.— The term state charitable institutions, when used in this chapter, shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the state, except institutions for the instruction of the deaf and dumb and the blind, and such institutions which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the commission in lunacy or the prison commission, whether managed or controlled by the state or by private corporations, societies or associations.

[New.]

§ 3. State board of charities.— There shall continue to be a state board of charities, composed of eleven members, who shall be appointed by the governor, by and with the advice and consent of the senate, one of whom shall be appointed from, and reside in each judicial district of the state, one additional member from the county of Kings, and two additional members from the

county of New York, who shall respectively reside in such counties. They shall be known as commissioners of the state board of charities, and hold office for eight years. No commissioner shall qualify or enter upon the duties of his office, or remain therein, while he is a trustee, manager, director or other administrative officer of an institution subject to the visitation and inspection of such board. The commissioners in office at the time this chapter takes effect, shall continue in office for the terms for which they were respectively appointed.

[L. 1895, ch. 771, § 1,
without change in substance.]

§ 4. Officers of the board.—The board may elect a president, and vice-president from its own members, and shall appoint and continue to have a secretary, and may appoint such other officers, inspectors and clerks as it may deem necessary or proper and fix their compensation, who shall respectively hold their office during the pleasure of the board.

[L. 1893, ch. 771, § 5, superseding
L. 1867, ch. 951, § 9; R. S., 8th ed., p. 2138, and
L. 1863, ch. 661, § 15; R. S., 8th ed., p. 2145,
without change, except that the board is expressly authorized to fix the compensation of officers.]

§ 5. Compensation and expenses of commissioners.—The compensation of each commissioner, in recognition of the provisions of the constitution, is fixed at ten dollars for each day's attendance at meetings of the board or of any of its committees, not exceeding in any one year the sum of five hundred dollars. The expenses of each commissioner, necessarily incurred while engaged in the performance of the duties of his office, and his outlay for any assistance that may have been required in the performance of such duties, on the same being paid out and certified by the commissioner making the charge, shall be paid by the treasurer, on the warrant of the comptroller.

**[L. 1895, ch. 771, § 6, superseding
L. 1867, ch. 951, § 15; R. S., 8th ed., p. 2145,
with the following change: The words “out of any moneys
in the treasury not otherwise appropriated” are stricken
out, as they add nothing to the section. The Constitution,
art. III, § 21, expressly provides that no money shall be paid
out of the state treasury, except by virtue of an appropria-
tion.]**

§ 6. Meetings and effect of nonattendance.—The board may adopt rules and orders, regulating the discharge of its functions and defining the duties of its officers. It shall, by rule, provide for holding stated and special meetings. Six members regularly convened shall constitute a quorum. The failure on the part of any commissioner to attend three consecutive meetings of the board during any calendar year, unless excused by a formal vote of the board, may be treated by the governor as a resignation by such nonattending commissioner and the governor may appoint his successor. The annual reports of the board shall give the names of commissioners present at each of its meetings.

**[L. 1893, ch. 771, § 7, superseding,
L. 1873, ch. 571, §§ 2 and 6; R. S., 8th ed., p. 2139,
without change in substance.]**

§ 7. Office room and supplies.—The trustees of public buildings shall furnish and assign to such board, in the capitol, at Albany, suitably furnished rooms for its office and place of holding meetings, and the comptroller shall furnish it with all necessary journals, account books, blanks and stationery.

**[L. 1895, ch. 771, § 3, with the following change,
The words “proper authorities” are stricken out and the words
“trustees of public buildings” inserted. This change is made
for the sake of clearness.**

Public Buildings Law (L. 1893, ch. 227), § 2, defined who the trustees of public buildings are, and § 3 defines their duties.]

§ 8. Official seal, certificates and subpoenas.—The board shall cause a record to be kept of its proceedings by its secretary or other proper officer, and it shall have and use an official seal; and the records, its proceedings and copies of all papers and documents in its possession and custody may be authenticated in the usual form, under such seal and the signature of its president or secretary, and shall be received in evidence in the same manner and with like effect as deeds regularly acknowledged or proven; it may issue subpoenas, which, when authenticated by its president and secretary, shall be obeyed and enforced in the same manner as obedience is enforced to an order or mandate made by a court of record.

[L. 1895, ch. 771, § 4,

without change in substance, and see § 933, Code of Civil Procedure.]

§ 9. General powers and duties of board.—The state board of charities shall visit, inspect and maintain a general supervision of all institutions, societies or associations which are of a charitable, eleemosynary, correctional or reformatory character, whether state or municipal, incorporated or not incorporated, which are made subject to its supervision by the constitution or by law; and shall,

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions aforesaid.

4. Approve or disapprove the organization and incorporation of all institutions of a charitable, eleemosynary, correctional or reformatory character which are or shall be subject to the supervision and inspection of the board.

5. Investigate the management of all institutions made subject to the supervision of the board, and the conduct and efficiency of the officers or persons charged with their management, and the

care and relief of the inmates of such institution therein or in transit.

6. Aid in securing the best sanitary condition of the buildings and grounds of all such institutions, and advise measures for the protection and preservation of the health of the inmates.

7. Aid in securing the establishment and maintenance of such industrial, educational and moral training in institutions having the care of children as is best suited to the needs of the inmates.

8. Establish rules for the reception and retention of inmates of all institutions which, by section fourteen of article eight of the constitution, are subject to its supervision.

9. Investigate the condition of the poor seeking public aid and advise measures for their relief.

10. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

11. Collect statistical information in respect to the property, receipts and expenditures of all institutions, societies and associations subject to its supervision, and the number and condition of the inmates thereof, and of the poor receiving public relief.

[L. 1895, ch. 771, § 2,

without change in substance, except that subdivision 4 is extended so that the power of approval of certificates of organization and incorporation applies to such institutions as are subject to the visitation of the board. Upon this subject see Membership Corporations Law, § 31 (L. 1895, ch. 559).]

§ 10. Visitation, inspection and supervision of institutions.—All institutions of a charitable, eleemosynary, reformatory or correctional character or design, including reformatories (except those now under the supervision and subject to the inspection of the prison commission), but including all reformatories, except those in which adult males convicted of felony, shall be confined, asylums and institutions for idiots and epileptics, alms-houses,

orphan asylums, and all asylums, hospitals and institutions, whether state, county, municipal, incorporated or not incorporated, private or otherwise, except institutions for the custody, care and treatment of the insane, are subject to the visitation, inspection and supervision of the state board of charities, its members, officers and inspectors. Such institutions may be visited and inspected by such board, or any member, officer or inspector duly appointed by it for that purpose, at any and all times.

Such board or any member thereof may take proofs and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection.

Any member or officer of such board, or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge thereof, any information he may deem necessary in the discharge of his duties. The board may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the board. No such officer or inspector shall divulge or communicate to any person without the knowledge and consent of said board any facts or information obtained pursuant to the provisions of this act; on proof of such divulgement or communication such officer or inspector may at once be removed from office. The annual reports of each year shall give the results of such inquiries, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employe of any such institution, society or association who shall unlawfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish the information required by the board or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The right and powers hereby conferred may be enforced by an order

of the supreme court after notice and hearing, or by indictment by the grand jury of the county or both.

[L. 1895, ch. 771, §§ 8, 9 and 10, and subd. 12, superseding L. 1873, ch. 571, § 4; R. S., 8th ed., p. 2140, L. 1867, ch. 951, §§ 4, 5, 6; R. S., 8th ed., without change in substance.]

§ 11. Powers and duties of board on visits and inspections.—On such visits, inquiry shall be made to ascertain:

1. Whether all parts of the state are equally benefited by the institutions requiring state aid.

2. The merits of any and all requests on the part of any such institution for state aid, for any purpose, other than the usual expenses thereof; and the amount required to accomplish the object desired.

3. The sources of public moneys received for the benefit of such institution, as to the proper and economical expenditure of such moneys and the condition of the finances generally.

4. Whether the objects of the institution are being accomplished.

5. Whether the laws and the rules and regulations of this board, in relation to it, are fully complied with.

6. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

7. The methods of government and discipline of its inmates.

8. The qualifications and general conduct of its officers and employes.

9. The condition of its grounds, buildings and other property.

10. Any other matter connected with or pertaining to its usefulness and good management.

[L. 1895, ch. 771, § 10, subs. 1-11, without change in substance.]

§ 12. Investigations of institutions.—The board may direct an investigation, by a committee of one or more of its members, of

the affairs and management of any institution society or association, subject to its supervision, or of the conduct of its officers and employes. The commissioner or commissioners designated to make such investigation are hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath, and to exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

[L. 1895, ch. 771, § 12,
without change in substance.]

§ 13. Orders of board directed to institutions.—If it shall appear, after such investigation, that inmates of the institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision, or other condition necessary to their comfort and well being, said board may issue an order, in the name of the people, and under its official seal, directed to the proper officers or managers of such institution, requiring them to modify such treatment or apply such remedy, or both, as shall therein be specified; before such order is issued, it must be approved by a justice of the supreme court, after such notice as he may prescribe and an opportunity to be heard, and any person to whom such an order is directed who shall willfully refuse to obey the same, shall, upon conviction, be adjudged guilty of a misdemeanor.

[L. 1895, ch. 771, § 13,
without change in substance.]

§ 14. Correction of evils in administration of institutions.—The state board of charities shall call the attention of the trustees, directors or managers of any such institution, society or association, subject to its supervision, to any abuses, defects or evils which may be found therein, and such officers shall take proper action thereon, with a view to correcting the same, in accordance with the advice of such board.

[L. 1895, ch. 771, § 14,
without change in substance.]

§ 15. Duties of the attorney-general and district attorneys.— If, in the opinion of the board or any three members thereof, any matter in regard to the management or affairs of any such institution, society or association, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, and he shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties.

**[L. 1895, ch. 771, § 17, superseding
L. 1873, ch. 571, § 5; R. S., 8th ed., p. 2140,
without change in substance.]**

§ 16. State, nonresident and alien poor.—A poor person shall not be admitted as an inmate into a state institution for the feeble-minded, or epileptics, unless a resident of the state for one year next preceding the application for his admission.

The state board of charities, and any of its members or officers, may, at any time, visit and inspect any institution subject to its supervision to ascertain if any inmates supported therein at a state, county or municipal expense are state charges, non-residents, or alien poor; and it may cause to be removed to the state or country from which he came any such nonresident or alien poor found in any such institution.

[The first sentence of section is taken from L. 1880, ch. 549 (supply bill), extract from § 1. The remainder of section is new.]

§ 17. Reports of state board of charities.—The state board of charities shall annually report to the legislature its acts, proceedings and conclusions for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and from the reports made to it as in this chapter provided, giving a complete and

itemized statement of expenditures for state poor, and of such other matters relating to the institutions subject to its visitations, as it may deem necessary or proper. The board shall collect, and so far as it shall deem advantageous, embody in its annual reports, such information as it may deem proper relating to all institutions, subject to the visitation of the board and respecting the best manner of dealing with those who require assistance from the public funds, or who receive aid from private charity, and represent its views as to the best methods of caring for the poor and destitute children who may be distributed through the various institutions of the state, or who may be without instruction or guidance, and furnish in tabulated statements, as nearly as possible, the number, sex, age and nativity of persons in this state, and in the several counties thereof, who are in any way receiving the aid of public, private or organized charity, with any other particulars it may deem proper. And all officers of such institutions shall furnish such statistics on or before the first day of November, in each and every year for the preceding fiscal year, as may be required by said board; and every person refusing to do so, in violation of this section without reasonable excuse, shall be subject to a penalty of one hundred dollars, to be sued for in the name of the people by the attorney-general of the state, upon his receiving written notice from the state board of charities of such refusal. The annual reports of the board may, in its discretion, present the designs and plans and the general estimates for buildings and improvements, which it may deem necessary for any state charitable institution, with the opinion of the board respecting any appropriation required as asked in behalf of such institution, other than for maintenance or ordinary purposes. The board may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

[L. 1895, ch. 771, § 18, superseding

L. 1873, ch. 571, § 7; R. S., 8th ed., p. 2139,

without change in substance.]

§ 18. Institutions for the deaf and dumb and the blind.— Institutions for the deaf and dumb and the blind shall be subject to such visitation and inspection by the state board of charities as the constitution provides, but nothing in this article shall be deemed to take from the comptroller of the state any power which he now has to audit and supervise the expenditures made on account of the institutions for deaf-mutes and for the blind.

[L. 1895, ch. 771, § 11,
without change in substance.]

ARTICLE II.

State Charities' Aid Association.

Section 30. Visits by the state charities' aid association.

31. Duties of officers in charge of institutions; enforcement of orders.

32. Annual reports.

Section 30. Visits by the state charities' aid association.— Any justice of the supreme court, on written application of the state charities' aid association, through its president or other officer designated by its board of managers, may grant to such person as may be named in such application, orders to enable such persons, or any of them, as visitors of such association to visit, inspect and examine, in behalf of such association any of the public charitable institutions and state hospitals for the insane owned by the state, and the county, town and city poor-houses and alms-houses within the state. The persons so appointed to visit, inspect and examine such institutions shall reside in the counties from which such institutions receive their inmates, and such appointments shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the institution to be visited, inspected and examined and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

[L. 1893, ch. 635, § 1,
without change in substance.]

§ 31. Duties of officers in charge of institutions; enforcement of orders.— All persons in charge of any such institution shall admit each person named in any such order into every part of such institution, and render such person every possible facility to enable him to make in a thorough manner such visits, inspection and examination, which are hereby declared to be for a public purpose, and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner as obedience is enforced to an order or mandate by a court of record.

[L. 1893, ch. 635, § 2,
without change in substance.]

§ 32. Annual reports.— Such association shall make an annual report to the state board of charities upon matters relating to the institutions subject to the visitation of such board; and to the state commission in lunacy upon matters relating to the institutions subject to the inspection and control of such commission. Such reports shall be made on or before the first day of November for each preceding fiscal year.

[L. 1893, ch. 635, § 3,
without change, except that the time of making the report is changed from December to November, to enable the state board of charities to include in their report to the legislature such parts of the report as they may desire.]

ARTICLE III.

Regulation of Finances of State Charitable Institutions, and Reports to and Accounts Against Municipalities.

Section 40. Fiscal year.

41. Monthly estimates of expenses; contingent fund.
42. Monthly statements of receipts and expenditures.
43. Affidavit of steward; vouchers.
44. Purchases.
45. Reports to supervisors of appointments and commitments to charitable institutions.

Section 46. Reports by officers of certain institutions to clerks of boards of supervisors and cities.

47. Verified accounts against counties, cities and towns.

Section 40. Fiscal year.—The fiscal year of all state charitable institutions shall commence with the first day of October in each year, and close with the thirtieth day of September, next succeeding; and the annual reports of such institutions required by this chapter, shall be made for the fiscal year as herein named.

[L. 1879, ch. 109; R. S., 8th ed., p. 2148,
without change in substance.]

§ 41. Monthly estimates of expenses; contingent fund.—The superintendent or other managing officer of each of the state charitable institutions, and of the New York State School for the Blind at Batavia and the Northern New York Institution for Deaf-Mutes at Malone, shall, on or before the fifteenth day of each month, cause to be prepared duplicate estimates in minute detail, of the expenses required for the institution of which he has the supervision, for the ensuing month. He shall countersign and submit one of such duplicates to the comptroller, and retain the other to be placed on file in the office of the institution. The comptroller may cause such estimates to be revised either as to quantity and quality of supplies and the estimated cost thereof. Upon the revision and approval of such estimate, the comptroller shall authorize the boards of managers or other managing officers of such institutions to make drafts on him, as the money may be required for the purposes mentioned in such estimates, which drafts shall be paid on his warrant, out of the funds in the treasury of the state appropriated for the support of such charitable institutions. In every such estimate, there shall be a sum named, not to exceed two hundred and fifty dollars, as a contingent fund, for which no minute detailed statement need be made. No expenditure shall be made from such contingent fund, except in case of actual emergency, requiring immediate action, and which can not be deferred without loss or danger

to the institution, or the inmates thereof. The treasurer of a state charitable institution shall not pay accounts for goods furnished, salaries of officers, or wages of employes, unless they are contained in the estimate provided in this section, and duly approved by the comptroller.

[L. 1895, ch. 13, §§ 1, 2, in which by reference the provisions of L. 1893, ch. 214, § 2, are made applicable without material change.

The act of 1893 relates to the monthly estimates of expenses of state hospitals for the insane.]

§ 42. Monthly statements of receipts and expenditures.—The treasurer of each state charitable institution shall on or before the fifteenth day of each month, make to the comptroller, a full and perfect statement of all the receipts and expenditures, specifying the several items, for the last preceding calendar month. Such statement shall be verified by the affidavit of the treasurer attached thereto, in the following form:

I,, treasurer of the, do solemnly swear that I have deposited in the bank designated by law for such purpose all the moneys received by me on account of such during the last month; and I do further swear that the foregoing is a true abstract of all the moneys received, and expenditures made by me or under my direction as such treasurer during the month ending on the day of 18..

[L. 1895, ch. 807, p. 588 (annual appropriation act), without change in substance.

The placing of this section in this law will make its repetition in future appropriation bills unnecessary.]

§ 43. Affidavit of steward; vouchers.—There shall be attached to such treasurer's statement, the affidavit of the steward or other officer having like powers, to the effect that the goods and other articles therein specified were purchased and received by him or under his directions at the institution, that the goods were

purchased at a fair cash market price and paid for in cash, and that he or any person in his behalf had no pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deductions or presents, or in any other manner whatever, directly or indirectly; that the articles contained in such bill were received at the institution; that they conformed in all respects to the invoiced goods received and ordered by him, both in quality and quantity.

Such statement shall be accompanied by the voucher showing the payment of the several items contained in the statement, the amount of such payment and for what the payment was made.

Such vouchers shall be examined by the comptroller and compared with the estimates made for the month for which the statement is rendered.

If any voucher is found objectionable, the comptroller shall endorse his disapproval thereon, with the reason therefor, and return it to the treasurer, who shall present it to the board of managers for correction and immediately return it to the comptroller. All such vouchers shall be filed in the office of the comptroller.

[L. 1893, ch. 214, § 4,

which by reference in L. 1895, ch. 13, is made applicable to all state charitable institutions. It originally was applicable only to state hospitals for the insane.]

§ 44. Purchases.—All purchases for the use of the state charitable institutions shall be made for cash and not on credit or time; every voucher shall be duly filled up at the time it is taken, and with every abstract of vouchers paid, there shall be proof on oath that the voucher was filled up and the money paid at the time it was taken. The board of managers shall make all needful rules and regulations to enforce the provisions of this section. No member or officer of the state board of charities or manager or officer of a state charitable institution shall be interested, directly or indirectly, in the furnishing of materials, labor

or supplies for the use of any state charitable institution nor shall any manager act as attorney or counsel for the board of managers thereof.

[This section, except the last sentence as applied to state charitable institutions, is new. A similar requirement is made in the care of state hospitals for the insane, and it is suggested that it be made applicable to all charitable institutions supported by appropriations from the state treasury. The last sentence has been included in the annual supply bills from year to year. See L. 1895, ch. 932, sixth paragraph from the end.]

§ 45. Reports to supervisors of appointments and committals to charitable institutions.—Every judge, justice, superintendent or overseer of the poor, supervisor or other person who is authorized by law to make appointments or commitments to any state charitable institution, except almshouses, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which are liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or committed and the length of time of such appointment or commitment.

[L. 1880, ch. 347, §§ 1, 2, 8, 9; R. S., 8th ed., p 2148, as far as such sections relate to the State charitable institutions specified in this chapter, are here consolidated, with the following changes: The word "city" in line seven is new. The requirement of a report to the clerk of the city is new.]

§ 46. Reports by officers of certain institutions to clerks of supervisors and cities.—The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to which any person is committed or appointed, whose board, care,

instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person therein. Such report shall state when such person was received into the institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge.

[L. 1880, ch. 347, §§ 3, 4; R. S., 8th ed., p. 2148, as far as such sections relate to the state charitable institutions mentioned in this chapter. The provision relating to reports to city clerks is new.]

§ 47. Verified accounts against counties, cities and towns.—The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of a city from which any such person is committed and appointed, a verified report and statement of the account of such institution with such county, town or city, up to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the sum per week

or per annum charged, and if no part of such account has been paid, the report shall show such fact.

Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby.

The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county on the second day of the annual meeting of the board next after the receipt of the same.

[L. 1880, ch. 347, §§ 5, 6, 7; R. S., 8th ed., p. 2148, as far as they relate to the state charitable institutions specified in this chapter, are here consolidated, with the following change:

The words "or to the city clerk of a city" are new.]

ARTICLE IV.

Syracuse State Institutions for Feeble-Minded Children.

Section 60. Institution for idiots or feeble-minded children.

61. Powers and duties of boards of directors.

62. Salaries of officers.

63. Directors may hold donations in trust.

64. By-laws.

65. Duties of superintendent.

66. Duties of treasurer.

67. Semi-annual meeting and records of board of directors.

68. Manner of receiving pupils.

69. Discharge of state pupils and payment of expenses.

70. Expense of clothing state pupils.

Section 60. Institution for idiots or feeble-minded children.—
The management of the Syracuse State Institution for Feeble-Minded Children at Syracuse shall continue to be in a board of managers, which shall hereafter consist of the superintendent of public instruction and eight other persons, who shall continue

to be appointed by the senate upon the recommendation of the governor, as often as vacancies shall occur therein, and shall hold office for eight years, and until their successors are severally appointed, subject to removal by the governor for cause, after an opportunity given them to be heard in their defense. The managers now in office shall hold their offices until the expiration of the term for which they were respectively appointed.

[L. 1851, ch. 502, § 1; R. S., 8th ed., p. 2195,

L. 1862, ch. 220, §§ 1, 2; R. S., 8th ed., p. 2196,

L. 1891, ch. 51; R. S., 8th ed. (Supp.), p. 3495.

The governor, lieutenant-governor, secretary of state, comptroller and superintendent of public instruction were formerly members of the board of managers, ex-officio. By this proposed section all except the superintendent of public instruction are dropped from the board. Experience has shown that ex-officio managers of state institutions are of little use. By this section the managers are removable by the governor for cause shown, instead of by the senate upon the recommendation of the governor.]

§ 61. General powers and duties of boards of managers.—Five members of the board shall constitute a quorum for the transaction of business. The board shall have the general direction and control of all the property and concerns of the institution, and shall take charge of its general interests and see that its general design is carried into effect, according to law and the by-laws, rules and regulations of the institution. It shall appoint a superintendent, who shall be a well-educated physician, and a treasurer, who shall reside in the city of Syracuse, and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and with such sureties as the comptroller shall approve. Such board shall, annually, on or before the first day of February, report to the legislature the condition of the institution.

[L. 1862, ch. 220, §§ 3, 4; R. S., 8th ed., p. 2196, without change in substance. The first sentence is the last sentence of § 2 of such act. The last sentence of the section is taken from L. 1851, ch. 502, § 5; R. S., 8th ed., p. 2195.]

§ 62. Salaries of officers.—The board shall, from time to time, determine the annual salaries and allowances of the resident officers of the institution.

Such salaries and allowances shall be paid monthly by the treasurer of the institution in the same manner as other claims against the institution.

[L. 1862, ch. 220, §§ 5, 6; R. S., 8th ed., p. 2197.

The law now provides that no determination or change in salaries shall be made except at a meeting at which the comptroller and a majority of the ex-officio trustees are present, because of the dropping from the board of managers of the ex-officio members; we have changed this so that the determination of the salaries of the resident officers shall be made by the board of managers the same as in other state charitable institutions.]

§ 63. Managers may hold donations in trust.—The managers may take, and hold in trust for the State, any grant or devise of land, or any donation or bequest of money or other personal property, to be applied to the maintenance and education of feeble-minded children and the general use of the institution.

[L. 1862, ch. 220, § 7; R. S., 8th ed., p. 2197, without change in substance.]

§ 64. By-laws.—The managers may establish by-laws regulating the appointment and duties of officers, teachers, attendants and assistants; fixing the conditions of admission, support and discharge of pupils; and for conducting in a proper manner the business of the institution; and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the institution.

[L. 1862, ch. 220, § 8; R. S., 8th ed., p. 2197, without change in substance.]

§ 65. Duties of superintendent.— The superintendent shall be the chief executive officer of the institution. He shall, subject to the provision of the board of managers and the by-laws and regulations established by them,

1. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same;

2. Appoint a steward, a medical assistant and a matron, who, with the superintendent, shall constantly reside in the institution or upon premises adjoining, and shall be termed the resident officers thereof;

3. Employ such teachers, attendants and assistants as he may think proper and necessary to economically and efficiently carry into effect the design of the institution; prescribe their several duties and places, fix their compensation, and discharge any of them;

4. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy, in any department of labor and expense.

5. Maintain salutary discipline among all who are in the employ of the institution, and enforce strict compliance with his instructions, and uniform obedience to all the rules and regulations of the institution;

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution, with the condition and prospects of the pupils to be kept regularly, from day to day, in books provided for the purpose;

7. See that such accounts and records shall be fully made up to the first days of April and October in each year, and that the principal effects and results, with his report thereon, be presented to the board at its semi-annual meetings;

8. Conduct the official correspondence of the institution and keep a record of the applications received, and the pupils admitted;

9. Prepare and present to the board at its annual meetings, when required, an inventory of all the personal property and effects belonging to the institution.

10. Account, when required, for the careful keeping and economical use of all furniture, stores and other articles furnished for the institution;

11. Enter in a book to be provided and kept for that purpose, at the time of the admission of each pupil to the institution, a minute, with the date, name, residence of the pupil, and of the persons on whose application he is received; with a copy of the application, statement, certificate, and all other papers accompanying such pupil; the originals of which he shall file and carefully preserve.

[Subdivision 1 is taken from L. 1862, ch. 220, § 9, R. S., 8th ed., 2197; subdivision 2 is taken from § 4 of that act; subdivisions 3, 4, 5, 6, 7, 8, 9, 10 from § 9, and subdivision 11 from section 16, without change in substance. The form of section is altered and the different powers and duties of the superintendent are here specified by means of subdivisions.]

§ 66. Duties of treasurer.—The treasurer shall,

1. Have the custody of all moneys, notes, mortgages and other securities and obligations belonging to the institution;

2. Keep a full and accurate account of all receipts and payments, as directed in the by-laws, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his book on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and, within three days thereafter, deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a further comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting;

4. Render a quarterly statement of his receipts and payments to such auditing committee, who shall, in like manner as above, compare, verify, report and certify the result thereof to the managers at their annual meeting, who shall cause the same to be recorded in one of the books of the institution;

5. Render a further account of the state of his books and of the funds and other property in his custody, whenever required by the managers;

6. Receive for the use of the institution any and all sums of money which may be due upon any notes or bonds in his hands, belonging to the institution, any and all sums charged and due to the institution for the support of any pupil therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses;

7. Prosecute an action in his name as such treasurer, to recover any sum of money that may be due or owing to the institution;

8. Execute a release and satisfaction of a mortgage, judgment or other lien, in favor of the institution, when paid, so that the same may be discharged from record.

[Subdivisions 1-5 are re-enacted § 14 of L. 1862, ch. 220, R. S., 8th ed., 2198. Subdivisions 6, 7, 8, are taken from § 15 of such act. That part of § 15 which relates to the rendering of a judgment in actions prosecuted by the treasurer against persons in debt to the institution is omitted. It seems best that such actions should conform with the provisions of the code of civil procedure relating to all other actions of a similar nature.]

§ 67. Semi-annual meetings and records of board of managers.—The board of managers shall maintain an effective inspection of the affairs and management of the institution, for which purpose they shall meet at the institution twice in each year, at such times as the by-laws shall provide. The resident officers shall admit the managers into every part of the institution, and shall exhibit to them on demand the books, papers, accounts and writings belonging to the institution, and shall furnish copies, abstracts and reports whenever required by the managers.

A committee of three managers to be appointed by the board at the annual meeting thereof, shall visit the institution once in every month, and perform such other duties and exercise such other powers as shall be prescribed in the by-laws, or the board may direct. The board shall keep in a bound book, to be pro-

vided for the purpose, a fair and full record of all its doings, which shall be open at all times to the inspection of its members, and all persons whom the governor and either house of the legislature may appoint to examine the same.

[L. 1862, ch. 220, §§ 11, 12, 13; R. S., 8th ed., p. 2198, without change in substance.]

§ 68. Manner of receiving pupils.—There shall be received and gratuitously supported in the institution one hundred and twenty feeble-minded children, as state pupils, who shall be selected from those whose parents or guardians are unable to provide for their support, in equal numbers as far as may be, from each judicial district. Such additional number of feeble-minded children as can be conveniently accommodated shall be received into the institution on such terms as shall be just.

If the number of feeble-minded children admitted shall not equal the capacity of the institution, such additional number of nonteachable idiots may be admitted as can be conveniently accommodated.

Feeble-minded children shall be received into the institution upon the written request of the person by whom they are sent, stating the name in full, age, place of nativity, if known, the town, city or county in which each resides, and whether such child, his parents or guardian, are able to provide for his support, in whole or in part, and if in part only what part, the degree of relationship or other circumstances of connection between him and the person requesting his admission, which statement must be verified by the affidavit of two disinterested persons, residents of the same county as the child and acquainted with the facts and circumstances stated, and certified to be credible by the county judge of the county.

Such judge must also further certify that such child is an eligible and proper candidate for admission to such institution.

Feeble-minded children may also be received into such institution upon the official application of a county superintendent of

the poor, or the commissioners of charity of a city of the state having such officers.

In the admission of feeble-minded children, preference shall be given to poor or indigent children over all others, and to such as are able or have parents able to support them only in part, over those who are or who have parents who are able to wholly support such children.

[L. 1862, ch. 220, § 18; R. S., 8th ed., p. 2199,
without change in substance.]

§ 69. Discharge of state pupils and payment of expenses.—When the manager shall direct a state pupil to be discharged from the institution, the superintendent thereof may return him to the county from which he was sent, and deliver him to the keeper of the alms-house thereof, and the superintendent of the poor of the county shall audit and pay the actual and reasonable expenses of such return. If any town, county or person is legally liable for the support of such pupil, such expenses may be recovered by action in the name of the county by such superintendent of the poor. If the superintendent of the poor neglect or refuse to pay such expenses on demand, the treasurer of the institution may pay the same and charge the amount to the county; and the treasurer of the county shall pay the same with interest after thirty days, out of any funds in his hands not otherwise appropriated; and the supervisors shall raise the amount so paid as other county charges.

[L. 1862, ch. 220, § 19; R. S., 8th ed., p. 2199,
without change in substance.]

§ 70. Expense of clothing state pupils.—The supervisors of any county from which state pupils may have been received shall cause to be raised annually, while such pupils remain in the institution, the sum of thirty dollars for each pupil, for the purpose of furnishing suitable clothing, which shall be paid to the treasurer of the institution on or before the first day of April.

The superintendent may agree with the parent, guardian or committee of a feeble-minded child, or with any person, for the support, maintenance and clothing of such a child at the institu-

tion, upon such terms and conditions as may be prescribed, in the by-laws, or approved by the managers. Every parent, guardian, committee, or other person applying for the admission into the institution of a feeble-minded child who is able, or whose parents or guardians are of sufficient ability to provide for his maintenance therein, shall at the time of his admission, deliver to the superintendent an undertaking, with one or more sureties, to be approved by the managers, conditioned for the payment to the treasurer of the institution of the amount agreed to be paid for the support, maintenance and clothing of such feeble-minded child, and for the removal of such child from the institution without expense thereto, within twenty days after the service of the notice hereinafter provided. If such child, his parents or guardians are of sufficient ability to pay only a part of the expense of supporting and maintaining him, such undertaking shall be only for his removal from the institution as above mentioned; and the superintendent may take security by note or other written agreement, with or without sureties, as he may deem proper, for such part of such expenses as such child, his parents or guardians are able to pay, subject, however, to the approval of the managers in the manner that shall be prescribed in the by-laws. Notice to remove a pupil shall be in writing, signed by the superintendent and directed to the parents, guardians, committee or other person upon whose request the pupil was received at the institution, at the place of residence mentioned in such request, and deposited in the post-office at Syracuse with the postage prepaid.

If the pupil shall not be removed from the institution within twenty days after service of such notice, according to the conditions of the agreement and undertaking, he may be removed and disposed of by the superintendent as herein provided, in relation to state pupils, and the provisions of this article respecting the payment and recovery of the expenses of the removal and disposition of a state pupil, shall be equally applicable to expenses incurred under this section.

[L. 1862, ch. 220, §§ 17, 20; R. S., 8th ed., p. 2199,
without change in substance.]

ARTICLE V.

State Custodial Asylum for Feeble-Minded Women.

Section 80. Established as a corporation.

81. Board of managers.

82. Officers

83. Treasurer to give undertaking.

Section 80. Established as a corporation.— The asylum established at Newark, Wayne county, for feeble-minded women is hereby continued as a body corporate and shall be known as the State Custodial Asylum for Feeble-Minded Women.

[L. 1885, ch. 281, § 1; R. S., 8th ed., p. 2145,
without change in substance.]

§ 81. Board of managers.— Such asylums shall continue to have a board of nine managers, three of whom shall be women, and shall be appointed by the governor, by and with the consent of the senate, for six years, except appointments to fill vacancies, which shall be for the unexpired term. The board of managers shall have the custody and control of all property and power to make all rules for the management and control of the effects of the asylum.

[L. 1885, ch. 281, § 2; R. S., 8th ed., p. 2145,
without change in substance.]

§ 82. Officers.— The board of managers shall appoint, of their number, a president, a secretary and a treasurer. They shall appoint a superintendent, a matron, and employ all assistants that may be necessary for the proper management of the asylum.

[L. 1885, ch. 281, § 2 (next to last sentence) 3; R. S., 8th ed.,
p. 2145,
without change in substance.]

§ 83. Treasurer to give undertaking.— The treasurer shall, before he receives any money, give an undertaking to the people

of the state, with such sureties and in such amount as the board of managers shall require and to be approved by the comptroller, to the effect that he faithfully perform his trust as such treasurer.

【L. 1885, ch. 281, last sentence of § 2; R. S., 8th ed., p. 2146, without change in substance.】

ARTICLE VI.

Rome State Custodial Asylum.

Section 90. Asylum for unteachable idiots.

91. Appointment of managers.

92. Powers and duties of managers.

93. Superintendent, qualifications, powers and duties.

94. Commitments to asylum, maintenance.

Section 90. Asylum for unteachable idiots.—The asylum established at Rome for the support, maintenance and custody of unteachable idiots is hereby continued and shall be known as the Rome State Custodial Asylum.

【L. 1895, ch. 59, § 1, without change in substance.】

§ 91. Appointment of managers.—Such asylum shall be under the control and management of a board of eleven managers, appointed by the governor, by and with the advice and consent of the senate and whose term of office shall be six years.

The managers now in office shall hold their offices until the expiration of the terms for which they were respectively appointed, or until their successors are appointed and have qualified. They may be removed by the governor, upon charges preferred against them in writing, after an opportunity given them to be heard thereon.

They shall appoint one of their number as president and another as secretary.

[L. 1895, ch. 59, § 2,
without material change,

It is provided that the managers of the asylum be removed by the governor, upon charges preferred in writing and after an opportunity to be heard. The present law provides for removal by the senate upon the recommendation of the governor.]

§ 92. Powers and duties of managers.—The board of managers shall,

1. Have the general direction and control of all the property and concerns of the asylum, take charge of its general interests and see that its design is carried into effect, according to law, and its by-laws, rules and regulations.

2. Establish by-laws, rules and regulations, subject to the approval of the state board of charities, for the internal government, discipline and management of the asylum.

3. Maintain an effective inspection of the asylum for which purpose, a majority of the managers shall visit the asylum at least once in every three months, and at such other times as may be prescribed in the by-laws.

The superintendent or other officer in charge shall admit such managers into every part of the asylum and its buildings and exhibit to them on demand all the books, accounts and writings belonging to the asylum and pertaining to its interest, and furnish copies, abstracts and reports whenever required by them.

4. Annually report to the legislature for the preceding fiscal year, the affairs and conditions of the asylum, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvements, betterments or other necessary objects.

5. If lands are required for the use of the asylum, acquire the same by purchase, gift or condemnation.

[L. 1895, ch. 59, §§ 2, 3, 4, 5. Under the present law the power to make by-laws is implied. By the revision they are expressly given such power. The provision for inspection by the board of managers is new.]

§ 93. Superintendent, qualifications, powers and duties.— The superintendent shall be a resident of this state, a well-educated physician and a graduate of an incorporated medical college, of at least five years actual experience in an institution for the cure and treatment of the insane. He shall be the chief executive officer of the asylum, and shall manage the institution in conformity to rules and regulations adopted by the board of managers. He shall appoint the assistant physicians, steward, clerk, a bookkeeper, matron and all subordinate employes and he may discharge them, when, in his judgment, it may be necessary to do so, for the good of the institution.

§ 94. Commitments to asylum; maintenance.— The superintendents of the poor of the various counties of the state, may commit to such asylum, if vacancies exist therein, such unteachable idiots residing in their respective counties, who are indigent or inmates of county alms-houses, according to the by-laws and regulations of the asylum. All commitments shall be in the form prescribed by the board of managers. Insane idiots or epileptics shall not be committed to such asylum.

Unteachable idiots other than the poor and indigent may be admitted to the asylum, if vacancies exist, after providing for the care and custody of the poor and indigent idiots, at a rate which shall not exceed the weekly per capita cost of maintaining all inmates as determined yearly by the board of managers.

The maintenance of the institution and the poor and indigent inmates thereof shall be a charge upon the state.

[L. 1895, ch. 59, §§ 6, 7,
without change in substance.]

ARTICLE VII.

The Craig Colony for Epileptics.

Section 100. Establishment and objects of colony.

101. Managers of the colony.

102. Buildings and improvements.

103. Powers and duties of managers.

Section 104. Annual report; state board of charities.

105. Donations in trust.

106. Officers of the colony.

107. Duties of the superintendent.

108. Duties of treasurer.

109. Designation and admission of patients.

110. Support of state patients.

111. Apportionment of state patients.

112. The support of private patients.

113. Discharge of patients.

114. Notice of opening of colony.

Section 100. Establishment and objects of colony.—The colony for epileptics established at Sonyea, Livingston county, is hereby continued, and shall be known as the Craig Colony for Epileptics, in honor of the late Oscar Craig, of Rochester, New York, whose efficient and gratuitous public services in behalf of epileptics and other dependent unfortunates, the state desires to commemorate.

The objects of such colony shall be to secure the humane, curative, scientific and economical care and treatment of epileptics, exclusive of insane epileptics.

**[L. 1894, ch. 363, §§ 1 and 2, in part,
without change in substance.]**

§ 101. Managers of the colony.—There shall be a board of twelve managers of the Craig colony, all of whom shall be citizens of the state, appointed by the governor, by and with the advice and consent of the senate, one from each judicial district and one additional member from each of the fifth, sixth, seventh and eighth judicial districts. The term of office of each manager hereafter appointed to succeed a manager whose term has expired shall be three years, and the term of office of four of such managers shall expire annually. The managers in office when this chapter takes effect shall continue in office until the expiration of the term for which they were appointed and until their successors are appointed and have qualified. Appointments to fill

vacancies occurring by death, removal or resignation, shall be made without unnecessary delay for the unexpired term. Failure of any manager to attend in each year the whole of two stated meetings of the board, shall be a sufficient cause for removal by the governor. Any manager may be removed by the governor upon written charges preferred against him, after an opportunity to be heard in his defense. The managers shall receive no compensation for their services, but shall be allowed their reasonable traveling and official expenses, to be paid as other charges against the institution.

[L. 1894, ch. 363, § 3, as am. by
L. 1895, ch. 439, § 1.

This section is unchanged, except in respect to the removal of managers by the governor, which is new. The provisions contained in such section in regard to the designation of terms is omitted. The present managers are continued in office until the expiration of their terms.]

§ 102. Buildings and improvements.—The board of managers shall put the premises conveyed to the state for the use of the colony into proper condition for the reception of patients and shall receive patients gradually and as rapidly as the condition of the colony will admit. They shall utilize all buildings and improvements on the land so conveyed, and construct such additional buildings and make further improvements upon plans adopted by them and approved by the state board of charities and for which appropriations are made by the legislature.

There shall be provided for such colony an abundant supply of wholesome water, sufficient means for drainage and the disposal of sewage and a proper sanitary system. All of which shall be done under the direction of the board of managers in accordance with plans adopted by them, and approved by the state board of charities.

[L. 1894, ch. 363, §§ 2, 5,

with changes in wording only, except that the state board of charities is given power of approval of all plans for the construction of improvements and buildings.]

§ 103. Powers and duties of managers.—Six members of the board of managers shall constitute a quorum for the transaction of business. The board shall:

1. Elect from their number a president and secretary, and may adopt a seal for the use of the colony.

2. Have the government, direction and control of the patients, officers and employes of the colony and of all the property and concerns thereof.

3. Purchase supplies for the use of the colony and such raw materials as may be necessary for the trades and industries pursued therein, and provide for the disposal of the manufactured products and the product of the land.

4. Employ the assistants necessary for the government of the colony, and to educate and properly use the labor of the patients.

5. Establish such by-laws, rules and regulations as they may deem necessary regulating the appointment, powers and duties of officers, teachers, attendants and assistants, fixing the condition of admission, treatment, education, support and discharge of patients, conducting in a proper manner the business of the colony, and regulating the internal government, discipline and management of the colony.

6. Maintain an effective inspection of the affairs and management of the colony, for which purpose they shall meet at the institution at least four times in each year and at such other times as the by-laws shall prescribe. Their annual meeting shall be held on the second Tuesday of October.

7. Appoint at its annual meeting, a committee of three managers, who shall visit the colony at least once in every month, and perform such other duties and exercise such other powers as are prescribed in the by-laws, or directed by the board.

8. Copy in a bound book, a fair and full record of all its proceedings, which shall be open at all times to the inspection of its members and officers of the state board of charities, and all persons whom the governor or either house of the legislature may appoint to examine the same.

[L. 1894, ch. 363, § 8, as am. by
L. 1895, ch. 439,
without change in substance.]

§ 104. Annual report; state board of charities.—The board of managers of the Craig colony shall annually, on or before the first day of November, for the preceding fiscal year, report to the state board of charities the affairs and conditions of the colony, with full and detailed estimates of the next appropriation required for maintenance and ordinary uses and repairs, and of special appropriations, if any, needed for extraordinary repairs, renewals, extensions, improvement, betterments or other necessary objects, as also for the erection of additional buildings needed by reason of overcrowding, and in order to prevent the same, or to meet the need of sufficient accommodations for patients seeking admission to the colony; and the state board of charities shall, in its annual report to the legislature, certify what appropriations are, in its opinion, necessary and proper. The said colony shall be subject to the visitation and to the general powers of the state board of charities.

[L. 1894, ch. 363, § 7,
without change in substance.]

§ 105. Donations in trust.—The managers may take and hold in trust for the state any grant or devise of land, or any gift or bequest of money or other personal property, or any donation, to be applied, principal or income, or both, to the maintenance and education of epileptics and the general uses of the colony.

[L. 1894, ch. 363, § 6,
without change in substance.]

§ 106. Officers of the colony.—The board of managers shall appoint a superintendent of the colony, who shall be a well-educated physician and a graduate of a legally chartered medical college, with an experience of at least five years in the actual practice of his profession, and who shall be certified as qualified by the civil service commission, after a competitive examination; and a treasurer, who shall reside in the county of Livingston, and shall give an undertaking to the people of the state for the faithful performance of his trust, in such sum and form and with such sureties as the comptroller shall approve. Such officers may be discharged or suspended at any time by such board, in its discretion. The superintendent shall constantly reside in the colony. The board shall determine the annual salaries and allowances of the superintendent, steward and matron, not exceeding, in addition to maintenance supplies, the following sums for salaries: Four thousand dollars to the superintendent; fifteen hundred dollars to the steward; one thousand dollars to the matron; and the board shall determine the annual salary of the treasurer of the colony, not exceeding fifteen hundred dollars. Such salaries and allowances shall be paid quarterly, on the first day of October, January, April and July, each year, by the treasurer of the colony, on presentation of bills therefor, audited, allowed and certified, as prescribed in the by-laws.

[L. 1894, ch. 363, § 9,

without change, except that the managers are required to approve the schedule of wages.]

§ 107. Duties of the superintendent.—The superintendent shall be the chief executive officer of the colony, and subject to the supervision and control of the board of managers; he shall:

1. Oversee and secure the individual treatment and personal care of each and every patient of the colony while resident therein and the proper oversight of all the inhabitants thereof.

2. Have the general superintendence of the buildings, grounds and farm, with their furniture, fixtures and stock, and the direction and control of all persons employed in and about the same.

3. Give, from time to time, such orders and instructions as he may deem best calculated to induce good conduct, fidelity and economy in any department of labor or education or treatment of patients.

4. Appoint a steward and a matron and employ a bookkeeper and such teachers, assistants and attendants as he may think necessary to economically and efficiently carry into effect the design of the colony; prescribe their duties and places, and, subject to the approval of the board of managers, fix their compensation. The steward and matron shall reside in the colony.

5. Maintain salutary discipline among all employes, patients and inhabitants of the colony, and enforce strict compliance with his instructions and uniform obedience to all the rules and regulations of the colony.

6. Cause full and fair accounts and records of the entire business and operations of the colony, with the condition and prospects of the patients, to be kept regularly, from day to day, in books provided for that purpose.

7. See that such accounts and records shall be fully made up to the first days of January, April, July and October, in each year, and that the principal facts and results, with his report thereon, be presented to the board of managers at its quarterly meetings.

8. Conduct the official correspondence of the colony, and keep a record or copy of all letters written by himself and by his clerks and agents, and files of all letters received by him or them.

9. Prepare and present to the board, at its annual meeting, a true and perfect inventory of all the personal property and effects belonging to the colony, and account, when required by the board, for the careful keeping and economical use of all furniture, stores and other articles furnished for the colony.

10. Keep a record of all applications for admission of patients, and enter in a book to be provided and kept for that purpose, at the time of admission of each patient to the colony, a minute, with the date, name, residence of the patient, and of the persons on whose application he is received, with a copy of the application, statement, certificate, and all other papers received relating to

such epileptic patient, the originals of which he shall file and carefully preserve, and certified copies whereof he shall forthwith transmit to the state board of charities.

[L. 1894, ch. 363, § 10,

without change in substance. Subdivision 4 is taken from a part of § 9.]

§ 108. Duties of treasurer.—The treasurer, among his other duties, shall:

1. Have the custody of all moneys received on account of the monthly estimates made to the comptroller by the superintendent as provided by this chapter, and all other money, notes, mortgages and other securities and obligations belonging to the colony.

2. Keep a full and accurate account of all receipts and payments, in the form prescribed by the by-laws, and such other accounts as shall be required of him by the managers.

3. Balance all the accounts on his books on the first day of each October, and make a statement thereof, and an abstract of all the receipts and payments of the past year; and within five days thereafter deliver the same to the auditing committee of the managers, who shall compare the same with his books and vouchers, and verify the same by a comparison with the books of the superintendent, and certify the correctness thereof to the managers at their annual meeting.

4. Render a quarterly statement of his receipts and payments to such auditing committee who shall, in like manner as above, compare, verify, report and certify the result thereof, to the managers at their annual meeting, who shall cause the same to be recorded in one of the books of the colony.

5. Render a further account of the state of his books, and of the funds and other property in his custody, whenever required by the managers.

6. Receive for the use of the colony, money which may be paid upon obligation or securities in his hands belonging to the colony; and all sums paid to the colony for the support of any patient

therein, or, for actual disbursements made in his behalf for necessary clothing and traveling expenses; and money paid to the colony from any other source.

7. Prosecute an action in the name of the colony to recover money due or owing to the colony, from any source; including the bringing of suit for breach of contract between private patients or their guardians and the managers of the colony.

8. Execute a lease and satisfaction of a mortgage, judgment, lien or other debt when paid.

9. Pay the salaries of the superintendent, treasurer, matron, steward, and of all employes of the colony, and the disbursements of the officers and members of the board as aforesaid. The treasurer shall have power to employ counsel, subject to the approval of the board of managers.

10. Deposit all moneys received for the care of private patients and all other revenues of the colony, in a bank designated by the comptroller, and transmit to the comptroller a statement showing the amount so received and deposited and from whom, and for what received, and the dates on which such deposits were made. Such statement of deposit shall be certified by the proper officer of the bank receiving such deposit or deposits. The treasurer shall verify by his affidavit that the sum so deposited is all the money received by him from any source of income for the colony up to the time of the last deposit appearing on such statement. A bank designated by the comptroller to receive such deposits shall, before any such deposit be made, execute a bond to the people of the state in a sum and with sureties to be approved by the comptroller, for the safe keeping of such deposits.

[L. 1894, ch. 363, § 11, subd. 1-11,
without change in substance.]

§ 109. Designation and admission of patients.— There shall be received and gratuitously supported in the colony, epileptics residing in the state, who, if of age, are unable, or, if under age, whose parents or guardians are unable to provide for their sup-

port therein; and who shall be designated as state patients. Such additional number of epileptics as can be conveniently accommodated shall be received into the colony by the managers on such terms as shall be just, and shall be designated as private patients. Epileptic children shall be received into the colony only upon the written request of the persons desiring to send them, stating the name, age, place of nativity, if known, the town, city or county in which such children respectively reside, and the ability of their respective parents, or guardians or others to provide for their support in whole or in part, and if in part only, stating what part; and stating also the degree of relationship or other circumstances of connection between the patients and the persons requesting their admission; which statement in all cases of state patients must be verified by the affidavits of the petitioners and of two disinterested persons, and accompanied by the opinion of a qualified physician, all residents of the same county with the epileptic patient, and acquainted with the facts and circumstances stated, and who must be certified to be credible by the county judge or surrogate of the county; and such judge or surrogate must also certify, in each case, that such state patient, in his opinion, is an eligible and proper candidate for admission to the colony. State patients may also be received into the colony upon the official application of a county superintendent of the poor, or of the poor authorities of any city.

It shall be the duty of the superintendent of the poor in every county and of the poor authorities of every city to furnish annually to the state board of charities, a list of all epileptics in their respective jurisdictions, so far as the same can be ascertained, with such particulars as to the condition of each epileptic as shall be prescribed by the said state board. Whenever an epileptic shall become a charge for his or her maintenance on any of the towns, cities or counties of this state, it shall be the duty of all poor authorities of such city, and of the county superintendents of the poor, and of the supervisors of such county, to place such epileptic in the said colony. Any parent, guardian or friend of an epileptic child within this state may make application to the

poor authorities of any city, or the superintendent of the poor of any county or the board of supervisors or any supervisor of any town, ward or city where such child resides, showing by satisfactory affidavit or other proof that the health, morals, comfort or welfare of such child may be endangered or not properly cared for if not placed in such colony; and thereupon it shall be the duty of such officer or board to whom such application may be made to place such child in said colony. The board of supervisors shall provide for the support of such patients, except those properly supported by the state, and may recover for the same from the parents or guardians of such children. In the admission of patients preference shall always be given to poor or indigent epileptics, or the epileptic children of poor or indigent persons, over all others; and preference shall always be given to such as are able to support themselves only in part, or who have parents able to support them only in part, over those who are able or who have parents who are able wholly to furnish such support.

[L. 1894, ch. 363, § 12,
without change in substance.]

§ 110. Support of state patients.— State patients shall be provided with proper board, lodging, medical treatment, care and tuition; and the managers of the colony shall receive for each state patient supported therein a sum not exceeding two hundred and fifty dollars per annum; which payments, if any, shall be made by the treasurer of the state, on the warrant of the comptroller, to the treasurer of the said colony, on his presenting the bill of the actual time and number of patients in the colony, signed and verified by the superintendent and treasurer of the colony and by the president and secretary of its board of managers. The supervisors of any county from which such patients may have been received into the colony shall cause to be raised annually while such patients remain in the colony, the sum of thirty dollars for each of such state patients for the purpose of furnishing suitable clothing, and the same shall be paid to the treasurer of the colony on or before the first day of April of each year.

**[L. 1894, ch. 363, § 13,
without change in substance.]**

§ 111. Apportionment of state patients.—Whenever applications are made at one time for admission of more state patients than can be properly accommodated in the colony, the managers shall so apportion the number received, that each county may be represented in a ratio of its dependent epileptic population to the dependent epileptic population of the state, as shown by statistics furnished by the state board of charities.

**[L. 1894, ch. 363, § 16,
without change in substance.]**

§ 112. The support of private patients.—The superintendent of the colony may agree with any epileptic who may be of age, or his committee or guardian, or with the parents, guardian or committee, of any epileptic child, or with any person for the entire or partial support, maintenance, clothing, tuition, training, care and treatment of such epileptic in the colony, on such terms and conditions as may be prescribed in the by-laws or approved by the managers. Every patient, guardian, committee or other person applying for the admission into the colony of an epileptic who is, or whose parents or guardians are of sufficient ability to provide for his support and maintenance therein, shall at the time of his admission, execute a bond to the treasurer of the colony with one or more sureties, to be approved by the superintendent and treasurer, in such sum as the managers shall prescribe, to the effect that the obligers will pay to the treasurer of the colony all sums of money at such time or times as shall be so agreed upon, and remove such epileptic from the colony free of expense to the managers within twenty days after the service of the notice hereinafter provided for. If such epileptic, his parents or guardian are of sufficient ability to pay only a part of the expenses of supporting and maintaining him at the institution, such undertaking shall be only for such partial support and maintenance and for removal from the institution as above mentioned; and

the treasurer may take security by such obligation or in his discretion by note or other written agreement, with or without surties, as he may deem proper for such part of such expenses as the epileptic, his parents or guardians are able to pay; but such exercise of discretion shall be with the approval of the superintendent and a committee of the managers in a manner that shall be prescribed in the by-laws. Notice to remove a patient shall be in writing, signed by the superintendent and directed to the epileptic, his parents, guardian, committee or other person upon whose request the patient was received at the colony, at the place of residence mentioned in such request, and deposited in the post-office at Sonyea or any post-office in Livingston county, with the postage prepaid.

[L. 1894, ch. 363, § 14,

without change, except that the bond required is executed to the treasurer, instead of the superintendent.]

§ 113. Discharge of patients.—The superintendent of the colony, with the approval of the managers or of a committee thereof, shall have power to discharge patients, but no epileptic patient shall be returned to any poor-house, directly through a superintendent of the poor, or otherwise. In case a patient, not an epileptic, shall be sent to the colony, through mistaken diagnosis of his disease, or other cause, and there received, such patient shall be returned to and the traveling expenses of such return shall be paid by the person who sent him or her to the colony. Should an epileptic become insane, such patient, if a state patient, shall be sent to the state hospital of the district of which he was a resident just prior to his admission to the colony in the manner prescribed by law. The bills for the reasonable expenses incurred in the transportation of state patients to and from the state hospitals after they have been approved in writing by the state commission in lunacy, shall be paid by the treasurer of the state on the warrant of the comptroller from the funds provided for the support of the state hospitals. In case the relatives, guardians or friends of such an insane patient desire that

he become an inmate of any state hospital situated beyond the limits of the district of which he was formerly a resident, and there be sufficient accommodations in such state hospital, he shall be received there in the manner provided by law for the transfer of other insane persons. Private patients, who may become insane, shall be committed, as prescribed by law, subject to the regulations of the state commission in lunacy, to such institution for the insane as may be designated by the relatives, guardians or friends of such insane person, all traveling and other expenses of removal to be paid by them. After any patient has been delivered to the managers or officers of such hospital or institution, the care and custody of the managers of the colony over such insane person shall cease; and after any patient shall, as aforesaid, be so certified to be insane as prescribed by law, such patient shall come under the supervision of the state commission in lunacy.

[L. 1894, ch. 363, § 15,
without material change.]

§ 114. Notice of opening of colony.—So soon as the colony shall be ready for the reception of patients, it shall be the duty of the board of managers officially to send notice of such fact to the county clerks and the clerks of the boards of supervisors of the respective counties of the state, and the secretary of the state board of charities; and to furnish such clerks of counties and boards of supervisors with suitable blanks for the commitment of epileptics to such colony.

[L. 1894, ch. 363, § 17,
without change in substance.]

ARTICLE VIII.

Institutions for Juvenile Delinquents.

Section 120. State industrial school; managers.

121. Managers of House of Refuge for Juvenile Delinquents in New York city.

122. Powers and duties of managers.

Section 123. Superintendent.**124. Commitment of children.****125. Register.****126. Discipline and control of inmates.****127. Military drill.****128. Transfer of inmates to penitentiary or Elmira Reformatory.****129. Confinement of juvenile delinquents under sentences by the courts of the United States.****130. Effects of alcoholic drinks and narcotics to be taught.**

§ 120. State industrial school; managers.— The State Industrial School, at Rochester, is hereby continued for the reception of all male and female children, under the age of sixteen years, who shall be legally committed to such school as vagrants or on a conviction for any criminal offense by any court having authority to make such commitment.

Such school shall be under the control and management of a board of fifteen managers appointed by the governor. Their term of office shall be three years, and they shall be so appointed that the terms of one-third shall expire on the first Tuesday of February in each year. All vacancies shall be filled by the governor and the person appointed to fill a vacancy shall hold office for the remainder of the term of the person whom he succeeds. In the discretion of the governor, persons of either sex may be appointed as managers of such school. Such managers shall serve without compensation.

[L. 1846, ch. 143, § 10, part of § 11, as am. by L. 1888, ch. 404, and § 13; R. S., 8th ed., p. 2865; the part of § 13 relating to the age of children is changed to sixteen years to conform with the requirements of the Penal Code, §§ 701 and 713. Section 10 relates to the appointment of the first board of managers, which was made by the governor, lieutenant-governor and comptroller. This section is omitted.]

§ 121. Managers of house of refuge for juvenile delinquents in New York city.— The society for the reformation of juvenile delinquents in the city of New York shall continue to be a corporation by the name of “ the managers of the Society for the Reformation of Juvenile Delinquents in the city of New York,” with all the powers conferred upon it by its act of incorporation and the acts amendatory thereof. There shall continue to be thirty managers of such society, each of whom shall hold office for the term of three years; and the managers in office when this chapter takes effect shall continue in office for the terms for which they were chosen respectively. The members of such society residing in the city of New York shall annually on the third Monday in November, by a plurality of votes, elect ten managers of such society. If a vacancy shall occur in the office of any manager, the board of managers may appoint a person to fill the vacancy for the remainder of the unexpired term.

[L. 1824, ch. 126, §§ 1-3, provides for the incorporation of the Society for the Reformation of Juvenile Delinquents in the city of New York. We have not repealed this act, since there might have been rights acquired by such act which would be affected thereby. L. 1865, ch. 172, § 1, relates to the annual election of managers. It is superseded by this section although not expressly repealed by this chapter.]

§ 122. Powers and duties of managers.— The managers of such house of refuge, established by the society for the reformation of juvenile delinquents, in the city of New York, and of such state industrial school shall have the general control of such institutions and shall make all such rules, regulations, ordinances and by-laws for the government, discipline, employment, management and disposition of the officers thereof, and of the children while in such institution or in the care of such managers, as to them may appear just and proper. They shall appoint a superintendent and such other officers as they may deem necessary for the conduct and welfare of the institution under their charge. They shall report in detail an-

nually to the legislature on or before the fifteenth day of January, the number of children received by them into the institution, the disposition thereof, their receipts and expenditures, their proceedings during the preceding year, and all other matters which they deem advisable to be brought to the attention of the legislature.

[L. 1846, ch. 143, part of § 11, § 12 and part of § 13; R. S., 8th ed., p. 2865,

L. 1824, ch. 126, § 6; R. S., 8th ed., p. 2862,

without change in substance. The contents of the annual report are here specified more in detail.]

§ 123. Superintendent.—The superintendent so appointed shall be the chief executive officer of such school, or house of refuge, and subject to the by-laws, rules and regulations thereof and the powers of the board of managers, shall have control of the internal affairs and shall maintain discipline therein and enforce a compliance with, and obedience to, all rules, by-laws, regulations and ordinances adopted by such board for the government, discipline and management of such school or house of refuge.

Under direction of such managers, he shall receive and take into such institution all children legally committed thereto by any court having authority to make such commitment.

[L. 1846, ch. 143, § 13; R. S., 8th ed., p. 2865.

is in part re-enacted in this section, but most of the section is new in terms, although the powers which are here given to the superintendent are already impliedly possessed by him.]

§ 124. Commitment of children.—Children under the age of sixteen years may be committed from the rural counties of this state as vagrants, or on the conviction of any criminal offense by any court having authority to make such commitments, to the state industrial school or the house of refuge established by the society for the reformation of juvenile delinquents; but such children in the counties of New York and Kings shall

be committed to the house of refuge in New York city, established by such society. But no child under the age of twelve years shall be committed or sentenced to either of such institutions for any crime or offense less than felony. The courts of criminal jurisdiction in the several counties shall ascertain by such proof as may be in their power, the age of every delinquent committed to either of such institutions, and insert such age in the order of commitment and the age thus ascertained shall be deemed and taken to be the true age of such delinquent. If the court shall omit to insert in the order of commitment, the age of any delinquent committed to such school or house of refuge the managers shall as soon as may be after such delinquent shall be received by them, ascertain his age by the best means in their power, and cause the same to be entered in a book to be designated by them for that purpose, and the age of such delinquent thus ascertained shall be deemed and taken to be the true age of such delinquent.

[L. 1846, ch. 143, part of § 13; R. S., 8th ed., p. 2865, is re-enacted in the first sentence of this section, as is also L. 1850, ch. 24, § 1; R. S., 8th ed., p. 2866. The second sentence is a re-enactment of L. 1891, ch. 216. The remainder of the section is a re-enactment of L. 1852, ch. 387, §§ 2, 3; R. S., 8th ed., p. 2877. The part of this section relating to the commitment of delinquents to the New York House of Refuge, is taken from L. 1865, ch. 172, §§ 3, 4; R. S., 8th ed., p. 2864. The word "rural" inserted before "counties" in the first sentence is a typographical error and should be struck out.]

§ 125. Register.— Upon the commitment of a delinquent to such industrial school or house of refuge, the superintendent thereof shall cause to be entered in the register kept for that purpose, the date of admission, name, sex, age, place of birth, nationality, residence and such other facts as may be ascertained, relating to the origin, condition, peculiarity or inherited tendencies of such delinquent.

[This section is new in terms. The present law does not provide for the keeping of a register. The records of the institution show all the facts which are here required to be ascertained, the by-laws and regulations of the institution providing for the keeping of such records.]

§ 126. Discipline and control of inmates.— The managers of the state industrial school shall receive and detain during minority, every delinquent committed thereto in pursuance of law, or to the western house of refuge for juvenile delinquents, or to the house of refuge for juvenile delinquents in western New York. The managers of the house of refuge for juvenile delinquents in the city of New York, may receive and detain during minority all delinquents committed thereto. The managers of each institution shall cause the children detained therein or under their care to be instructed in such branches of useful knowledge, and to be regularly and systematically employed in such lines of industry as shall be suitable to their years and capacities, and shall cause such children to be subjected to such discipline, as in the opinion of such board, is most likely to effect their reformation. The managers of each institution, with the consent of any child committed thereto, may bind out as an apprentice or servant, such child during the time they would be entitled to retain him or her, to such persons and at such places to learn such trade and employment as in their judgment will be for the future benefit and advantage of such child.

[L. 1824, ch. 126, §§ 4, 5, as am. by

L. 1865, ch. 172, § 2; R. S., 8th ed., p. 2862,

L. 1846, ch. 143, part of § 13; R. S., 8th ed., p. 2865,

L. 1875, ch. 228, § 7; R. S., 8th ed., p. 2869,

L. 1886, ch. 539, § 3; R. S., 8th ed., p. 2869, as am. by

L. 1893, ch. 470, § 1,

without material change in substance.

The part of ch. 470 of L. 1893, which authorizes commitments to be made from all counties of the state, except New York and Kings, is contained in § 124, ante.]

§ 127. Military drill.— The superintendent of the state industrial school, and the superintendent of the house of refuge, established by the society for the reformation of juvenile delinquents, with the approval of the respective boards of managers thereof, may institute and establish a system of rules and regulations for uniforming, equipping, officering, disciplining and drilling in military art, the male inmates of such institutions, and for the exercise and drill of such inmates according to the most approved tactics, such number of hours daily as such superintendent may deem advisable.

[L. 1886, ch. 539, § 4; R. S., 8th ed., p. 2870,

is re-enacted and extended to the house of refuge established by the society for the reformation of juvenile delinquents.]

§ 128. Transfer of inmates to penitentiary or Elmira reformatory.— If a delinquent confined in the state industrial school or the house of refuge established by the society for the reformation of juvenile delinquents is guilty of attempting to set fire to any building belonging to either of such institutions, or to any combustible matter for the purpose of setting fire to any such building, or of openly resisting the lawful authority of an officer thereof, or of attempting to excite others to do so, or shall by gross or habitual misconduct exert a dangerous and pernicious influence over the other delinquents, the board of managers of the institution wherein such case arises shall submit a written statement of the facts to a justice of the supreme court, or, if the case arises within the state industrial school, to the county judge of the county of Monroe, and apply to him for an order authorizing a temporary confinement of such delinquent, in the Monroe county penitentiary, or if over sixteen years of age, in the Elmira reformatory; and if the case arises within the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, in the county jail or penitentiary of the county of New York, or if the delinquent be over sixteen years of age, to the Eastern New York reform-

atary, when completed, and until then to the Elmira reformatory. Such judge shall forthwith inquire into the facts, and if it appear that the statement is substantially true, and that the ends desired to be accomplished by the institution wherein the case has arisen will be best promoted thereby, he shall make an order authorizing the confinement of such delinquent in such penitentiary, county jail or reformatory for the limited time expressed in the order, and the keeper or superintendent of such penitentiary, county jail or reformatory shall receive such delinquent and detain him during the time expressed in such order. At the expiration of the time limited by such order, or sooner, if the board of managers of either of such institutions shall direct, the superintendent or keeper of such reformatory, county jail or penitentiary shall return such delinquent to the custody of the superintendent of the institution from which such delinquent shall have been received.

[L. 1861, ch. 506, as am. by .

L. 1891, ch. 375; R. S., 8th ed. (Supp.), p. 3342,

is re-enacted without change in substance, and extended to the house of refuge established by the society for the reformation of juvenile delinquents in New York city.]

§ 129. Confinement of juvenile delinquents under sentences by the courts of the United States.— The superintendents of the house of refuge, established by the society for the reformation of juvenile delinquents in the city of New York, and the state industrial school at Rochester, shall receive and safely keep in their respective institutions, subject to the regulations and discipline thereof, and the provisions of this article, any criminal under the age of sixteen years convicted of any offense against the United States, under sentences of imprisonment by any court of the United States, sitting within this state, until such sentences be executed, or until such delinquent shall be discharged by due course of law, conditioned upon the United States supporting such delinquent and paying the expenses attendant upon the execution of such sentence.

[L. 1853, ch. 608; R. S., 8th ed., p. 2867,
without change in substance.]

§ 130. Effects of alcoholic drinks and narcotics to be taught.—The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in the schools connected with such house of refuge established by the society for the reformation of juvenile delinquents in the city of New York and in the State Industrial school at Rochester, for not less than four lessons a week for ten or more weeks in each year. All pupils who can read shall study this subject from suitable text-books, but pupils unable to read shall be instructed in it orally by teachers using text-books adapted for such oral instruction as a guide and standard, and these text-books shall be graded to the capacities of the pupils pursuing such course of study.

[This section is new. By the amendment to the consolidated school law, chap. 1041 of L. 1895, it was provided that the nature of alcoholic stimulants should be taught in all schools connected with reformatory schools. This section is inserted to render that amendment operative as to the institutions mentioned in this article.]

ARTICLE IX.

Houses of Refuge and Reformatories for Women.

Section 140. Names and location of houses of refuge and reformatories for women.

141. Appointment of managers.

142. General powers and duties of managers.

143. Appointment and removal of officers, and employes; compensation.

144. General powers of superintendents.

145. Oaths and bonds.

146. Commitments; papers furnished by committing magistrates.

147. Return of females improperly committed.

Section 148. Disposition of children of women so committed.

149. Conveyance of women committed.

150. Detentions and rearrests in case of escapes.

151. Employment of inmates.

152. Employment of counsel.

153. Board of managers of Bedford reformatory to notify county clerks of completion thereof.

§ 140. Names and locations of houses of refuge and reformatories for women.— The houses of correction for women located at Hudson and Albion are continued and shall be known respectively as the House of Refuge for Women at Hudson, and the Western House of Refuge for Women. The reformatory for women located at Bedford is also continued and shall be known as the New York State Reformatory for Women.

[L. 1881, ch. 187, § 1; R. S., 8th ed., p. 2870,

L. 1890, ch. 238, § 1; R. S., 8th ed. (Supp.), p. 3430,

L. 1892, ch. 637, § 1; R. S., 8th ed. (Supp.), p. 3624.]

The acts here referred to are the acts creating the houses of refuge for women. The act of 1881, as am. by L. 1892, ch. 704, relates to House of Refuge for Women at Hudson. L. 1890, ch. 238, relates to the Western House of Refuge for Women at Albion. L. 1892, ch. 637, relates to the New York State Reformatory for Women at Bedford.]

§ 141. Appointment of managers.— Each such institution shall be under the control of its present board of managers, until others are appointed. Such boards shall consist of six managers to be appointed by the governor, by and with the advice and consent of the senate. All such managers shall be residents of the state, two shall be women and one a physician who has practiced his profession for ten years. The terms of the managers hereafter appointed shall be six years, except that the managers appointed to fill vacancies shall hold office for the unexpired terms of the managers whom they succeed. The term of office of one of such managers shall expire each year. If in any such institution

there be less than six managers in office when this act takes effect, the governor shall appoint additional managers to make up the number of six, who shall be so classified by him that the term of one manager shall expire each year. Where the term of office of a manager of any such institution expires at a time other than the last day of December in any year, the term of office of his successor is abridged so as to expire on the last day of December, preceding the time when such term would otherwise expire, and the term of office of each manager thereafter appointed shall begin on the first day of January.

The governor may remove any manager, at any time, for cause, on giving to such manager a copy of the charges against him and an opportunity to be heard in his defense.

Such managers shall receive no compensation for their time or services; but the actual expenses necessarily incurred by them in the performance of their official duties shall be paid in the same manner as other expenses of such institution. Nothing contained in this section shall abridge the term of any manager now in office.

[L. 1881, ch. 187, § 2; R. S., 8th ed., p. 2870, as am. by
L. 1895, ch. 253,
L. 1890, ch. 238, § 2,
L. 1892, ch. 637, § 2.]

The requirements in this section as to the number, terms of office and qualifications of the managers are the same as those provided for the House of Refuge for Women, at Hudson. As applied to the Western House of Refuge and the Woman's Reformatory they are new. The provision as to the expiration of the terms of the managers hereafter appointed is also new.]

§ 142. General powers and duties of managers.— Each board of managers shall have the general superintendence, management and control of the institution over which it is appointed; of the grounds and buildings, officers and employes thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof, and may

make such rules and regulations as may seem to them' necessary for carrying out the purposes of such institutions.

【There is nothing contained in any of the acts incorporating these institutions, prescribing the general powers and duties of the boards of managers. The power of supervision is impliedly imposed upon such boards. The law should contain some specific grant of power to them, and we have, therefore, inserted this section.】

§ 143. Appointment and removal of officers and employes; compensation.—The board of managers of each of such institutions shall appoint from among its members a president, secretary and treasurer, who shall hold office for such length of time as such board may determine.

They shall appoint a female superintendent, who shall hold office during the pleasure of the board.

Such boards of managers shall fix the compensation of the officers and employes of the institution under their charge.

【L. 1881, ch. 187, § 6; R. S., 8th ed., p. 2871, as am. by L. 1892, ch. 704; R. S., 8th ed. (Supp.), p. 3343, L. 1890, ch. 238, § 6; R. S., 8th ed. (Supp.), p. 3431, L. 1892, ch. 637, § 6; R. S., 8th ed. (Supp.), p. 3625, without material change.】

§ 144. General powers of superintendents.—The superintendent of each such institution shall, subject to the direction and control of the board of managers thereof:

1. Have the general supervision and control of the grounds and buildings of the institution, the subordinate officers and employes and the inmates thereof, and of all matters relating to their government and discipline.

2. Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the board of managers, as may seem to her proper or necessary for the government of such institution and its officers and employes; and for the employment, discipline and education of the inmates thereof.

3. Exercise such other powers and perform such other duties as the board of managers may prescribe.

Such superintendent shall also have power to appoint and remove all subordinate female officers and employes, subject to the approval of the board.

[This section is new. There is nothing in the present law determining the general powers of the superintendent. Impliedly she is the head of the institution and is vested with the supervision of the international affairs thereof. It would be better to define in a general way her powers, which we have done in this section.]

§ 145. Oaths and bonds.—Each manager and superintendent of such institutions shall take the constitutional oath of office and execute a bond to the people of this state, in the sum of five thousand dollars, with sureties approved by the state comptroller, which shall be filed in the office of the comptroller. The manager appointed as treasurer of such institution shall give an additional bond for such amount as the comptroller may direct. The comptroller may require other officers of such institutions to give a bond, if, in his opinion, the interests of the state demand it.

[L. 1881, ch. 187, § 3; R. S., 8th ed., p. 2871,

L. 1890, ch. 238, § 3; R. S., 8th ed. (Supp.), p. 3431,

L. 1892, ch. 637, § 3; R. S., 8th ed. (Supp.), p. 3625.

These acts provide that each manager should take the oath of office and give an official undertaking. The method of taking the oath, giving the bond, etc., are contained in the Public Officers' Law, §§ 10, 11, and are, therefore, omitted. The superintendent is not now required to give a bond and take the oath of office. The provision that the comptroller may require an additional bond from the manager appointed treasurer is new, as is also that authorizing him to require bonds from any of the officers of such institution.]

§ 146. Commitments; papers furnished by committing magistrates.—A female, between the ages of twelve and twenty-five years, convicted by any magistrate of petit larceny, habitual

drunkenness, of being a common prostitute, of frequenting disorderly-houses or houses of prostitution, or of a misdemeanor, and who is not insane, nor mentally or physically incapable of being substantially benefited by the discipline of either of such institutions, may be sentenced and committed to the House of Refuge for Women, at Hudson, and such females between the ages of fifteen and thirty years, convicted of like offenses, may be sentenced and committed to the Western House of Refuge for Women, at Albion, or the New York State Reformatory for Women, at Bedford. The term of such sentence and commitment shall be five years, but such female may be sooner discharged therefrom by the board of managers. Such commitments to the House of Refuge for Women, at Hudson, until the New York State Reformatory for Women, at Bedford, is completed and ready for the reception of inmates shall be made from the first, second, third, fourth, fifth and sixth judicial districts; to the Western House of Refuge at Albion, from the seventh and eighth judicial districts. Upon the completion of the New York State Reformatory for Women, at Bedford, commitments thereto shall be made from the first judicial district and the county of Westchester.

The board of managers of each such institution shall furnish the several county clerks of the state with suitable blanks for the commitment of women thereto.

Such county clerks shall immediately notify the magistrates of their respective counties of the reception of such blanks and that upon application they will be furnished to them.

The magistrate committing a female pursuant to this section shall immediately notify the superintendent of the institution to which the commitment is made of the conviction of such female, and shall cause a record to be kept of the name, age, birthplace, occupation, previous commitments, if any, and for what offenses; the last place of residence of such female, and the particulars of the offense for which she is committed. A copy of such record shall be transmitted, with the warrant of commitment, to the

superintendent of such institution, who shall cause the facts stated therein, and such other facts as may be directed by the board of managers, to be entered in a book of record.

Such magistrate shall, before committing any such female, inquire into and determine the age of such female at the time of commitment, and her age as so determined shall be stated in the warrant. The statement of the age of such female in such warrant shall be conclusive evidence as to such age, in any action to recover damages for her detention or imprisonment under such warrant, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment.

[L. 1881, ch. 187, § 7, first par. of § 8, § 9 and first sentence of § 10, as am. by

L. 1892, ch. 704; R. S., 8th ed. (Supp.), p. 3344,

L. 1890, ch. 238, §§ 8, 12 and 13; R. S., 8th ed. (Supp.), p. 3432,

L. 1892, ch. 637, §§ 8, 12 and 13; R. S., 8th ed. (Supp.), p. 3627,

are re-enacted in this section without change in substance.

The provision that commitments shall be made to the several houses of refuge from certain judicial districts is new.]

§ 147. Return of females improperly committed.— Whenever it shall appear to the satisfaction of the board of managers of any such institution, that any person committed thereto is not of proper age to be so committed or is not properly committed, or is insane or mentally incapable of being materially benefited by the discipline of any such institution, such board of managers shall cause the return of such female to the county from which she was so committed. Such female shall be so returned in the custody of one of the persons employed by such boards of managers to convey to such institutions women committed thereto, who shall deliver her into the custody of the sheriff of the county from which she was committed. Such sheriff shall take such female before the magistrate making the commitment, or some other magistrate having equal jurisdiction in such county, to be

by such magistrate resented for the offense for which she was committed to any such institution and dealt with in all respects as though she had not been so committed.

The costs and expenses of the return of such female, necessarily incurred and paid by any such board of managers shall be a charge against the county from which such female was committed, to be paid by such county to such board of managers in the same manner as other county charges are collected.

[L. 1881, ch. 187, § 10, sub. 1, as am. by
L. 1892, ch. 704, § 5; R. S., 8th ed. (Supp.), p. 3345,
L. 1890, ch. 238, § 14; R. S., 8th ed. (Supp.), p. 3433,
L. 1892, ch. 637, § 14; R. S., 8th ed. (Supp.), p. 3627,
without change in substance.]

§ 148. Disposition of children of women so committed.— If any woman committed to any such institution, at the time of such commitment is a mother of a nursing child in her care under one year of age, or is pregnant with child which shall be born after such commitment, such child may accompany its mother to and remain in such institution until it is two years of age and must then be removed therefrom.

The board of managers of any such institution may cause such child to be placed in any asylum for children in this state and pay for the care and maintenance of such child therein at a rate not to exceed two and one-half dollars a week, until the mother of such child shall have been discharged from such institution, or may commit such child to the care and custody of some relative or proper person willing to assume such care.

If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care a child more than one year of age, which might otherwise be left without proper care or guardianship, the magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care.

[L. 1881, ch. 187, § 10, sub. 3, as am. by
L. 1892, ch. 704, § 5; R. S., 8th ed. (Supp.), p. 3345,
L. 1890, ch. 238, § 16; R. S., 8th ed. (Supp.), p. 3433,
L. 1892, ch. 637, § 16; R. S., 8th ed. (Supp.), p. 3627,
without change in substance.]

§ 149. Conveyance of women committed.—The board of managers of each of such institutions shall employ suitable persons to be known as marshals, to convey from the place of conviction to such institution, all women legally committed thereto, and such marshals shall have the power and authority of deputy sheriffs in respect thereto. All expenses necessarily incurred in making such conveyance shall be paid by the treasurer of the board of managers. In case of the commitment of a woman, who, at the time thereof, is the mother of a nursing child or is pregnant, the board of managers shall designate a woman of suitable age and character to accompany the person so committed, along with the officer or representative, authorized in this section to be employed by such managers.

[L. 1881, ch. 187, § 11, as am. by
L. 1892, ch. 704, § 6; R. S., 8th ed. (Supp.), p. 3346,
L. 1890, ch. 238, § 17; R. S., 8th ed. (Supp.), p. 3434,
L. 1892, ch. 637, § 17; R. S., 8th ed. (Supp.), p. 3628,
without change in substance.]

§ 150. Detentions and rearrests in case of escapes.—The board of managers of any such institution may detain therein, under the rules and regulations adopted by them, any female legally committed thereto, according to the terms of the sentence and commitment, and conditionally discharge such female at any time prior to the expiration of the term of commitment.

If an inmate escape or be conditionally discharged from any such institution, the board of managers may cause her to be rearrested and returned to such institution, to be detained therein for the unexpired portion of her term, dating from the time of

her escape or conditional discharge. A person employed by the board of managers of any such institution to convey to such institution, women committed thereto, may arrest, without a warrant, an escaped inmate in any county in this state, and shall forthwith convey her to the institution from which she escaped; and a magistrate may cause an escaped inmate to be arrested and held in custody, until she can be removed to such institution, as in the case of her first commitment thereto.

A person conditionally discharged from any such institution may be arrested and returned thereto, upon a warrant issued by its president and secretary. Such warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to a person employed by such board of managers to convey to such institutions, women committed thereto, and may be executed by such person in any such county of this state.

[L. 1881, ch. 187, § 8; subs. 1, 2, 3, as am. by
L. 1892, ch. 704, § 3; R. S., 8th ed. (Supp.), p. 3344,
L. 1890, ch. 238, §§ 9-11; R. S., 8th ed. (Supp.), p. 3432,
L. 1892, ch. 637, §§ 9-11; R. S., 8th ed. (Supp.), p. 3626,
without change in substance.]

§ 151. Employment of inmates.—The board of managers of each institution shall determine the kind of employment for women committed thereto and shall provide for their necessary custody and superintendence. The provisions for the safe keeping and employment of such women shall be made for the purpose of teaching such women a useful trade or profession and improving their mental and moral condition.

Such board of managers may credit such women with a reasonable compensation for the labor performed by them, and may charge them with the necessary expenses of their maintenance and discipline, not exceeding the sum of two dollars per week. If any balance shall be found to be due such women at the expiration of their terms of commitment, such balance may be paid to them at the time of their discharge.

To secure the safe keeping, obedience and good order of the women committed to any such institution, the superintendent thereof, has the same power as to such women, as keepers of jails and penitentiaries possess as to persons committed to their custody.

[L. 1881, ch. 187, §§ 12-13, as am. by
L. 1892, ch. 704, § 7; R. S., 8th ed. (Supp.), p. 3346,
L. 1890, ch. 238, §§ 18, 19; R. S., 8th ed. (Supp.), p. 3434,
L. 1892, ch. 637, §§ 18, 19; R. S., 8th ed. (Supp.), p. 3625,
without change in substance.]

§ 152. Clothing and money to be furnished discharged inmates.— The board of managers of any such institution may, in their discretion, furnish to each inmate of such institution who shall be discharged therefrom, necessary clothing not exceeding twelve dollars in value, or if discharged between the first day of November and the first day of April to the value of not exceeding eighteen dollars, and ten dollars in money, and a ticket for the transportation of one person from such institution to the place of the conviction of such inmate, or to such other place as such inmate may designate, at no greater distance from such institution than the place of conviction.

[L. 1881, ch. 187, § 10, sub. 2, as am. by
L. 1892, ch. 704; R. S., 8th ed., p. 3345,
L. 1890, ch. 238, § 15; R. S., 8th ed., p. 3433,
L. 1892, ch. 637, § 15; R. S., 8th ed., p. 3627,
without change, except that the amount of money allowed is expressly prescribed, instead of by a reference to another act.]

§ 153. Board of managers of Bedford reformatory to notify county clerks of completion thereof.— As soon as the Bedford Reformatory for Women is completed and ready for the reception of inmates, the board of managers thereof shall notify the county clerks of Westchester and New York counties and furnish such clerks with suitable blanks for the commitment of women to such institution. Such county clerks, on the reception of such

notification, shall transmit a copy thereof to the several magistrates of such counties.

[L. 1892, ch. 637, § 7; R. S., 8th ed. (Supp.), p. 3626, without change in substance.]

This is a temporary provision and is here inserted because the reformatory at Bedford is not yet completed.]

ARTICLE X.

Thomas Asylum for Orphan and Destitute Indian Children.

Section 160. Establishment of asylum.

161. Board of managers.

162. Powers and duties of the board.

163. Officers; salaries.

164. Superintendent, powers and duties.

165. Treasurer, powers and duties.

Section 160. Establishment of asylum.—The Thomas Asylum for Orphan and Destitute Indian Children, established on the Cattaraugus reservation in the county of Erie, is hereby continued.

Such asylum may sue and be sued in the corporate name of “Thomas Asylum for Orphan and Destitute Indian Children,” and service of process and papers may be made upon the superintendent or any manager of such asylum.

[L. 1895, ch. 38, §§, 1, 8, without change in substance.]

§ 161. Board of managers.—Such asylum shall be under the control and management of a board of managers, consisting of ten members, three of whom shall be Seneca Indians. Such managers and their successors shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold their office for six years, and until others are appointed in their stead, subject to removal for cause by the governor. If any manager fails, without being excused by vote of the board, for one year, to attend the regular meeting of the board of which he is a member, his office shall become vacant. A certificate of every such

failure shall forthwith be transmitted by the board to the governor, and all vacancies caused by removal or expiration of office or otherwise shall be filled by the governor, by and with the consent of the senate.

[L. 1895, ch. 38, § 2,

without change in substance, except that failure to attend meetings of board of managers does not vacate the office of manager, if excused by a vote of the board.]

§ 162. Powers and duties of board of managers.—The board of managers shall have the general direction and control of all the property and concerns of such asylum, not otherwise provided for by law. They may acquire and hold, in the name of and for the people of the state of New York, property, by grant, gift, devise or bequest, except-reservation lands, which may be held by those managers who are Seneca Indians, to be applied to the maintenance of orphan and destitute Indian children, and the general use of the asylum. They shall not receive any compensation for their services, but shall receive actual and necessary traveling expenses for attending the regular meetings of the board, as prescribed by the by-laws of said asylum. They shall:

1. Adopt, with the approval or consent of the state board of charities, by-laws for the regulation and management of said asylum, and regulating the appointment and duties of officers, assistants and employes of the asylum, and ordain and enforce a suitable system of rules and regulations for the internal government, discipline and management of the same.

2. Take care of the general interests of the asylum, and see that its design is carried into effect according to law, and its by-laws, rules and regulations. They shall, on application, receive destitute and orphan Indian children from any of the several reservations located within this state, and shall furnish them such care, moral training, and education, and such instruction in husbandry, and the arts of civilization as shall be prescribed by their by-laws, rules and regulations.

3. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor, the state board of charities or any person appointed to examine the same by the governor, the state board of charities, or either house of the legislature.

4. Maintain an effective inspection of the asylum, for which purpose a committee of the board, consisting of at least four members thereof, shall visit the asylum at least bi-monthly, and the whole board at least twice a year, and at such other times as may be prescribed by the by-laws.

5. Enter in a book kept by them for that purpose, the date of each visit, the condition of the asylum and the children therein, and its property, and all such managers present shall sign such entries.

6. Make, annually, on or before the fifteenth day of January, a report to the legislature of the condition of said asylum, including a true account, in detail, of the receipts and disbursements of all moneys that shall come into their hands, or under their control, the number, age and sex of such destitute orphan children in said asylum, with the name of the reservation to which they belong, and the proportion of the year each has been maintained and instructed in said asylum, and such suggestions and recommendations as they may deem proper, or which may be required of them by the state board of charities.

[L. 1895, ch. 38, § 3,
without change in substance.]

§ 163. Officers; salaries.—Such board shall appoint for the asylum, as often as necessary, and for cause, after an opportunity to be heard, remove:

1. A superintendent, a matron, and a well-educated physician, who shall be a graduate of an incorporated medical college.

2. A treasurer, who shall give a bond to the people of the state for the faithful performance of his trust, with such sureties, and in such amount as the comptroller of the state shall approve.

The superintendent, matron, and other assistants shall constantly reside in the asylum, or on the premises, and shall be designated the resident officers of the asylum. The physician shall visit said asylum at such times, and perform such duties as shall be prescribed by the by-laws, rules and regulations of the asylum. Such board shall also, from time to time, with the approval of the state board of charities, fix the annual salaries and allowances of such officers. Such salaries shall be paid in equal monthly installments by the treasurer on the warrant of the board of managers, countersigned by the superintendent thereof, and certified as correct.

[L. 1895, ch. 38, § 4,

without change in substance, except that the officers can not be removed, except for cause, after an opportunity to be heard.]

§ 164. Superintendent, powers and duties.—The superintendent shall be the chief executive officer of such asylum, and in his absence or sickness, the matron shall perform the duties, and be subject to the responsibilities of the superintendent. Subject to the by-laws, rules and regulations established by the board of managers, such officer shall have the general superintendence of the buildings, grounds, and farm, together with their furniture, fixtures and stock, and shall:

1. Daily ascertain the condition of all the children and prescribe their conduct.

2. Appoint, with the approval of the board of managers, the other resident officers, assistants and employes not otherwise provided for, that he may think necessary for the economical and efficient performance of the business of the asylum, and prescribe their duties, and he may discharge them at his discretion.

3. Cause full and fair accounts and records of all his doings, and of the entire business and operation of the asylum to be kept regularly, from day to day, in books provided for that purpose.

4. See that all such accounts and records are justly made up for

the annual report to the legislature, as required by this act, and present the same to the board of managers, who shall incorporate them into their report to the legislature.

5. Keep in a book, in which he shall cause to be entered, at the time of the reception of any child, his name, age, residence, and the names of his parents (if any), to what reservation and tribe he belongs, and the date of such reception, and by whom brought, and the condition of the general health of such child.

[L. 1895, ch. 38, § 5,
without change in substance.]

§ 165. Treasurer, powers and duties.— The treasurer shall have the custody of all moneys, obligations and securities belonging to the asylum. He shall:

1. Open with some good and solvent bank, conveniently near the asylum, an account in his name as such treasurer, and deposit all moneys, upon receiving the same, therein, and draw from the same in the manner prescribed by the by-laws, specifying the object of payment.

2. Keep a full and accurate account of all receipts and payment in the manner directed by the by-laws, and such other accounts as the board of managers shall prescribe, render a statement to the board of managers whenever required by them.

[L. 1895, ch. 38, § 6,
without change in substance.]

ARTICLE XI.

Laws Repealed, When to Take Effect.

Section 170. Laws repealed.

171. When to take effect.

Section 170. Laws repealed.— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 171. When to take effect.— This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

| Laws of— | Chapter. | Sections. |
|-----------|----------|------------------|
| 1846..... | 148..... | All. |
| 1850..... | 24..... | All. |
| 1851..... | 502..... | All. |
| 1852..... | 387..... | All. |
| 1853..... | 159..... | All. |
| 1853..... | 608..... | All. |
| 1855..... | 163..... | All. |
| 1861..... | 306..... | All. |
| 1862..... | 220..... | All. |
| 1867..... | 739..... | All. |
| 1867..... | 951..... | All. |
| 1873..... | 571..... | All. |
| 1875..... | 228..... | All. |
| 1878..... | 72..... | All. |
| 1879..... | 109..... | All. |
| 1881..... | 187..... | All. |
| 1885..... | 281..... | All. |
| 1886..... | 539..... | All. |
| 1888..... | 404..... | All. |
| 1890..... | 238..... | All. |
| 1891..... | 51..... | All. |
| 1891..... | 216..... | All. |
| 1891..... | 375..... | All. |
| 1892..... | 637..... | All, except § 5. |
| 1892..... | 704..... | All. |
| 1893..... | 635..... | All. |
| 1894..... | 363..... | All. |
| 1895..... | 13..... | All. |
| 1895..... | 38..... | All, except § 9. |
| 1895..... | 59..... | All. |
| 1895..... | 253..... | All. |
| 1895..... | 439..... | All. |
| 1895..... | 771..... | All. |

**TABLE SHOWING DISPOSITION OF LAWS HEREBY
REPEALED.**

| Laws of | Page, R. S. 8th ed. | Disposition. |
|---|--------------------------------|---|
| 1846, ch. 143, §§ 1-9..... | 2865 | Temporary. |
| 1846, ch. 143, § 10..... | 2865 | Revision, 120. |
| 1846, ch. 143, § 11..... | 2865 | Revision, 120, 122. |
| 1846, ch. 143, § 12..... | 2865 | Revision, 122. |
| 1846, ch. 143, § 13..... | 2865 | Revision, 120, 122, 123, 127. |
| 1846, ch. 143, § 14..... | 2866 | Obsolete. |
| 1846, ch. 143, § 15..... | 2866 | Partly obsolete, in Re- vision, 124, and see § 701 of Penal Code. |
| 1846, ch. 143, § 16..... | 2866 | Rep. by L. 1886, ch. 593. |
| 1846, ch. 143, §§ 17, 18.... | 2866 | Obsolete. |
| 1850, ch. 24, § 1..... | 2866 | Revision, 124. |
| 1850, ch. 24, §§ 2-3..... | 2867 | Obsolete. |
| 1851, ch. 502, §§ 1-4..... | 2195 | Superseded by L. 1862, ch. 220. |
| 1851, ch. 502, § 5..... | 2195 | Revision, § 61. |
| 1852, ch. 387, § 1..... | 2867 | Obsolete. |
| 1852, ch. 387, §§ 2, 3..... | 2867 | Revision, 124. |
| 1853, ch. 159, all..... | 2195 | Obsolete. |
| 1853, ch. 608, § 1..... | 2867 | Revision, 129. |
| 1855, ch. 163, §§ 1, 2, 4.... | 2196 | Obsolete. |
| 1855, ch. 163, § 3..... | 2196 | Revision, 70. |
| 1861, ch. 306, §§ 1-3, as am. by L. 1891, ch. 375..... | 2868 | Revision, 128. |
| 1862, ch. 220, §§ 1, 2..... | 2196 | Revision, 60. |
| 1862, ch. 220, §§ 3, 4..... | 2196 | Revision, 61. |
| 1862, ch. 220, §§ 5, 6..... | 2197 | Revision, 62. |
| 1862, ch. 220, § 7..... | 2197 | Revision, 63. |
| 1862, ch. 220, § 8..... | 2197 | Revision, 64. |
| 1862, ch. 220, § 9..... | 2197 | Revision, 65. |
| 1862, ch. 220, § 10..... | 2197 | Civ. Code, 1030. |

| Laws of | Page R. S. 8th ed. | Disposition. |
|--|-------------------------------|--|
| 1862, ch. 220, §§ 11-13..... | 2198 | Revision, 67. |
| 1862, ch. 220, §§ 14, 15..... | 2198 | Revision, 66. |
| 1862, ch. 220, § 16..... | 2198 | Revision, 65. |
| 1862, ch. 220, § 17..... | 2199 | Revision, 70. |
| 1862, ch. 220, § 18..... | 2199 | Revision, 68. |
| 1862, ch. 220, § 19..... | 2199 | Revision, 69. |
| 1862, ch. 220, § 20..... | 2199 | Revision, 70. |
| 1862, ch. 220, § 21..... | 2200 | Not re-enacted. |
| 1867, ch. 739, § 1..... | 2199 | Amends L. 1862, ch. 220, § 17. |
| 1867, ch. 951, all..... | 2137 | Superseded by L. 1895, ch. 771. |
| 1873, ch. 571, all..... | 2139 | Superseded by L. 1895, ch. 771. |
| 1875, ch. 228, §§ 1-6..... | 2868 | Temporary. |
| 1875, ch. 228, § 7..... | 2869 | Revision, 126. |
| 1875, ch. 228, § 8..... | 2869 | Temporary. |
| 1875, ch. 228, § 9..... | 2869 | Revision, 124. |
| 1875, ch. 228, § 10..... | 2869 | Obsolete. |
| 1878, ch. 72, all..... | 2199 | Amends L. 1862, ch. 220, § 18. |
| 1879, ch. 109, all..... | 2148 | Revision, 40. |
| 1881, ch. 187, § 1..... | 2870 | Revision, 140. |
| 1881, ch. 187, § 2, as amend- ed by L. 1895, ch. 253... | 2870 | Revision, 141. |
| 1881, ch. 187, § 3..... | 2871 | Revision, 145. |
| 1881, ch. 187, § 4..... | 2871 | Revision, 141. |
| 1881, ch. 187, § 5..... | 2871 | Partly obsolete and in revision, 143. |
| 1881, ch. 187, §§ 6-13 were am. by L. 1892, ch. 704. | | |
| 1881, ch. 187, § 6..... | (Supp.) 3343 | Revision, 143. |
| 1881, ch. 187, § 7..... | (Supp.) 3343 | Revision, 146. |
| 1881, ch. 187, § 8..... | (Supp.) 3344 | Revision, 146, 150. |
| 1881, ch. 187, § 9..... | (Supp.) 3344 | Revision, 146. |

| Laws of | Page, R. S. 8th ed. | Disposition. |
|--|------------------------|------------------------------------|
| 1881, ch. 187, § 10..... | (Supp.) 3345 | Revision, 146-148. |
| 1881, ch. 187, § 11..... | (Supp.) 3346 | Revision, 149. |
| 1881, ch. 187, §§ 12, 13.... | (Supp.) 3346 | Revision, 151. |
| 1885, ch. 281, § 1..... | 2145 | Revision, 80. |
| 1885, ch. 281, § 2..... | 2145 | Revision, 81, 82. |
| 1885, ch. 281, § 3..... | 2146 | Revision, 82. |
| 1886, ch. 539, § 1..... | 2870 | Revision, 120. |
| 1886, ch. 539, § 2..... | 2870 | Obsolete. |
| 1886, ch. 539, § 3, as am. by L. 1893, ch. 470..... | 2870 | Revision, 120. |
| 1886, ch. 539, § 4..... | 2870 | Revision, 127. |
| 1888, ch. 404, all..... | 2865 | Amends L. 1846, ch. 143, § 11. |
| 1890, ch. 238, § 1..... | (Supp.) 3430 | Revision, 140. |
| 1890, ch. 238, § 2..... | (Supp.) 3430 | Revision, 141. |
| 1890, ch. 238, § 3..... | (Supp.) 3431 | Revision, 145. |
| 1890, ch. 238, § 4..... | (Supp.) 3431 | Revision, 141. |
| 1890, ch. 238, § 5..... | (Supp.) 3431 | Revision, 143, partly obsolete. |
| 1890, ch. 238, § 6..... | (Supp.) 3431 | Revision, 143. |
| 1890, ch. 238, §§ 7, 8..... | (Supp.) 3432 | Revision, 146. |
| 1890, ch. 238, §§ 9-11..... | (Supp.) 3432 | Revision, 150. |
| 1890, ch. 238, §§ 12, 13.... | (Supp.) 3432 | Revision, 146. |
| 1890, ch. 238, § 14..... | (Supp.) 3433 | Revision, 147. |
| 1890, ch. 238, § 15..... | (Supp.) 3433 | Not re-enacted. |
| 1890, ch. 238, § 16..... | (Supp.) 3433 | Revision, 148. |
| 1890, ch. 238, § 17..... | (Supp.) 3434 | Revision, 149. |
| 1890, ch. 238, §§ 18, 19.... | (Supp.) 3434 | Revision, 151. |
| 1890, ch. 238, § 20..... | (Supp.) 3434 | Temporary. |
| 1891, ch. 51, § 1..... | (Supp.) 3495 | Revision, 60. |
| 1891, ch. 216, § 1..... | (Supp.) 3505 | Revision, 124. |
| 1891, ch. 375, all..... | (Supp.) 3342 | Amends L. 1861, ch. 306. |
| 1892, ch. 637, § 1..... | (Supp.) 3624 | Revision, 140. |
| 1892, ch. 637, § 2..... | (Supp.) 3624 | Revision, 141. |
| 1892, ch. 637, § 3..... | (Supp.) 3624 | Revision, 145. |

| Laws of | Page, R. S. 8th ed. | Disposition. |
|--|------------------------|--------------------------------------|
| 1892, ch. 637, § 4..... | (Supp.) 3625 | Revision, 141. |
| 1892, ch. 637, § 5..... | (Supp.) 3625 | Not repealed. |
| 1892, ch. 637, § 6..... | (Supp.) 3625 | Revision, 143. |
| 1892, ch. 637, § 7..... | (Supp.) 3626 | Revision, 153. |
| 1892, ch. 637, § 8..... | (Supp.) 3626 | Revision, 146. |
| 1892, ch. 637, §§ 9-11..... | (Supp.) 3626 | Revision, 150. |
| 1892, ch. 637, §§ 12, 13.... | (Supp.) 3627 | Revision, 146. |
| 1892, ch. 637, § 14..... | (Supp.) 3627 | Revision, 147. |
| 1892, ch. 637, § 15..... | (Supp.) 3627 | Not re-enacted. |
| 1892, ch. 637, § 16..... | (Supp.) 3627 | Revision, 148. |
| 1892, ch. 637, § 17..... | (Supp.) 3628 | Revision, 149. |
| 1892, ch. 637, §§ 18, 19.... | (Supp.) 3628 | Revision, 151. |
| 1892, ch. 637, § 20..... | (Supp.) 3628 | Temporary. |
| 1892, ch. 704, §§ 1-7..... | (Supp.) 3343 | Amends L. 1881, ch. 187, §§ 6-12. |
| 1892, ch. 704, § 8..... | (Supp.) 3344 | Obsolete. |
| 1892, ch. 704, § 9..... | (Supp.) 3344 | Not re-enacted. |
| 1892, ch. 704, §§ 9, 10..... | (Supp.) 3346 | Revision, 192. |
| 1893, ch. 635, §§ 1-3..... | ..... | Revision, 30-32. |
| 1894, ch. 363, § 1..... | ..... | Revision, 100. |
| 1894, ch. 363, § 2..... | ..... | Revision, 100, 102. |
| 1894, ch. 363, § 3, as am. by L. 1895, ch. 439..... | ..... | Revision, 101. |
| 1894, ch. 363, § 4..... | ..... | Temporary. |
| 1894, ch. 363, § 5..... | ..... | Revision, 102. |
| 1894, ch. 363, § 6..... | ..... | Revision, 105. |
| 1894, ch. 363, § 7..... | ..... | Revision, 104. |
| 1894, ch. 363, § 8, as am. by L. 1895, ch. 439..... | ..... | Revision, 103. |
| 1894, ch. 363, § 9..... | ..... | Revision, 106. |
| 1894, ch. 363, § 10..... | ..... | Revision, 107. |
| 1894, ch. 363, § 11..... | ..... | Revision, 108, 41-43. |
| 1894, ch. 363, § 12..... | ..... | Revision, 109. |
| 1894, ch. 363, § 13..... | ..... | Revision, 110. |
| 1894, ch. 363, § 14..... | ..... | Revision, 112. |

| Laws of | Page, R. S. 8th ed. | Disposition. |
|------------------------------|--------------------------------|---|
| 1894, ch. 363, § 15..... | | Revision, 113. |
| 1894, ch. 363, § 16..... | | Revision, 111. |
| 1894, ch. 363, § 17..... | | Revision, 114. |
| 1895, ch. 13, §§ 1, 2..... | | Revision, 41-43. |
| 1895, ch. 38, §§ 1-6..... | | Revision, 160-165. |
| 1895, ch. 38, § 7..... | | Revision, 44. |
| 1895, ch. 38, § 8..... | | Revision, 160. |
| 1895, ch. 38, § 9..... | | Not repealed. |
| 1895, ch. 59, § 1..... | | Revision, 90. |
| 1895, ch. 59, § 2..... | | Revision, 91, 92. |
| 1895, ch. 59, §§ 3-5..... | | Revision, 92, 93. |
| 1895, ch. 59, §§ 6, 7..... | | Revision, 94. |
| 1895, ch. 253, all..... | | Amends L. 1881, ch. 187, § 1. |
| 1895, ch. 439, all..... | | Amends L. 1894, ch. 363, §§ 3 and 8. |
| 1895, ch. 563, § 1..... | | Revision, 120. |
| 1895, ch. 771, § 1..... | | Revision, 3, 9. |
| 1895, ch. 771, § 2..... | | Revision, 9. |
| 1895, ch. 771, § 3..... | | Revision, 7. |
| 1895, ch. 771, § 4..... | | Revision, 8. |
| 1895, ch. 771, § 5..... | | Revision, 4. |
| 1895, ch. 771, § 6..... | | Revision, 5. |
| 1895, ch. 771, § 7..... | | Revision, 6. |
| 1895, ch. 771, §§ 8, 9..... | | Revision, 10. |
| 1895, ch. 771, § 10..... | | Revision, 10, 11. |
| 1895, ch. 771, § 11..... | | Revision, 18. |
| 1895, ch. 771, § 12..... | | Revision, 12. |
| 1895, ch. 771, § 13..... | | Revision, 13. |
| 1895, ch. 771, § 14..... | | Revision, 14. |
| 1895, ch. 771, §§ 15, 16.... | | See Poor Law, § 118. |
| 1895, ch. 771, § 17..... | | Revision, 15. |
| 1895, ch. 771, § 18..... | | Revision, 18. |

THE POOR LAW.

THE POOR LAW.

[This bill became chap. 225 of the Laws of 1896.]

REVISERS' PRELIMINARY NOTE TO THE POOR LAW.

The committee on general laws in the Assembly of 1877 were, by resolution, directed to fully investigate the subjects involved in the Code of Poor Laws, and submit to that or the next Legislature "a bill designed to remedy the evils so onerous to the people, growing out of the existing poor laws and their administration." The committee, in compliance with the resolution, reported to the Legislature of 1880, a bill entitled "An act to revise and consolidate the general laws relating to the relief and support of indigent persons." The committee state in their report that it has been their aim to "simplify the laws and thus avoid the confusion in their administration which now exists, and is the cause of great annoyance to the superintendents and others charged with their administration."

This bill was not, however, adopted by the Legislature, and additional legislation upon the subject involved continued, but with no apparent aim to remove the evils complained of, except that title VIII of part VI of the Criminal Code, passed in 1881, prescribes a procedure for compelling the support of poor persons by their relatives of sufficient ability.

Provisions for the election and qualification of superintendents of the poor, with certain powers and duties of boards of supervisors, relating to the poor, are contained in the county law. Provisions for the election and qualification of overseers of the poor, with certain powers of town and town officers, relating to the poor, are in the town law.

The commission created by chapter 289 of the Laws of 1889, was therein especially directed to consolidate and revise the

general poor laws, and the bill herewith submitted is their compliance with such direction, and includes the remaining unrepealed parts of title I, chapter 20, part I, of the Revised Statutes, and other general acts relating to the poor as contained in the Session Laws and Revised Statutes.

It has been the aim of the commissioners to make the system of administering relief to all classes of the unfortunate poor as simple, uniform and certain as possible, so that no officer or bodies having this business in charge shall be excusable for neglect. For this attainment, slight changes in existing laws are, therefore, necessarily made.

Federal soldiers and their families, when in need, are to be supported at their homes, and there furnished necessary care and relief upon the demand of the proper officers of the Grand Army post having jurisdiction; but such relief is not made dependent upon the action or existence of such officers or their compliance with law. The duty to grant relief is imposed directly upon the public authorities. Other modifications are made to harmonize these provisions with our system, and to remove occasion for certain criticisms.

Article 7 contains the provisions of various statutes relating to the powers and duties of the State Board of Charities in administering the poor laws; and also the provisions of existing laws relating to the right of visitation of alms-houses by the State Charities Aid Association.

In connection with the revision of the law relating to the care of the poor, we have prepared a chapter called the "Charities Law," embracing the law concerning the creation of the State Board of Charities and its general powers and jurisdiction and especially with reference to its control and supervision of charitable institutions; and this proposed chapter also contains a revision of the statutes relating to the several charitable institutions of the State. In the present bill we have only retained so much of the law relating to the State Board of Charities as directly concerns the care of the poor in alms-houses or outside of the so-called charitable institutions.

The table immediately following the repealing schedule shows the disposition of laws repealed by this chapter in the revision or elsewhere.

Respectfully submitted,

CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON,
A. JUDD NORTHRUP.

Dated January 23, 1896.

THE POOR LAW.

AN ACT in relation to the poor, constituting chapter twenty-seven of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XXVII OF THE GENERAL LAWS.

The Poor Law.

- Article I. County superintendents of the poor. (§§ 1-14.)
 II. Overseers of the poor. (§§ 20-29.)
 III. Settlement and place of relief of poor persons.
 (§§ 40-56.)
 IV. Support of bastards. (§§ 60-75.)
 V. Soldiers, sailors and marines. (§§ 80-84.)
 VI. State poor. (§§ 90-104.)
 VII. Duties of state board of charities; powers of state
 charities aid association. (§§ 115-121.)
 VIII. Miscellaneous provisions. (§§ 130-147.)
 IX. Laws repealed; when to take effect. (§§ 150-151.)

ARTICLE I.

County Superintendents of the Poor.

- Section 1. Short title.
 2. Definitions.
 3. County superintendents of the poor.
 4. Appointment of superintendent as keeper of alms-
 house.
 5. When they may direct overseers of the poor to take
 charge of county poor.

Section 6. Idiots and lunatics.

7. Pestilence in alms-house.
8. Accounts of county treasurer with towns.
9. Annual apportionment of town expenses.
10. Tax levy on towns.
11. Expense of county poor.
12. Superintendents' report to the state board of charities.
13. Supervisors may direct as to temporary or outdoor relief to poor.
14. Penalty for neglect or false report.

Section 1. Short title.—This chapter shall be known as the poor law.

[New.]

§ 2. Definitions.—A poor person is one unable to maintain himself, and such person shall be maintained by the town, city, county or state, according to the provisions of this chapter. In counties having but one superintendent of the poor, the term “superintendent” or “superintendents of the poor,” when used in this chapter, means such superintendent; and in towns or cities having but one overseer of the poor, the term “overseers” or “overseers of the poor,” when used in this chapter, means a town or city overseer of the poor. An “alms-house” is a place where the poor are maintained at the public expense.

The town poor are such persons as are required by law to be relieved or supported at the expense of the town or city; the county poor are such persons as are required by law to be relieved or supported at the expense of the county; and the state poor are such persons as are required by law to be relieved or supported at the expense of the state.

**[R. S., pt. I, ch. 20, tit. I, § 14; R. S., 8th ed., p. 2106,
L. 1873, ch. 661, § 14; R. S., 8th ed., p. 2145.]**

Definition of a poor person changed so as to conform to what has been the general practice by the different local authorities in administering relief to the poor.

The case of *Schermerhorn v. Hull*, 13 John. Rep. 270, shows that to render one a pauper in law there need be no legal proceeding declaratory of, or producing that state, but if one is a pauper in fact, and applies for relief from the public, and receives it, he is a pauper within the meaning of the statute.

Chief Justice Shaw, of Massachusetts, under a statute similar to our own, states the law as follows: "Any person is held to be a pauper who is in want of immediate relief by reason of sickness, insanity, or in immediate need of food, clothes or shelter, upon the principle of simple humanity, and overseers of every city, district and town are bound by law to furnish him with support, without stopping to inquire whether the person has relatives liable for his support."

City of Charlestown v. Inhabitants of Groveland, 15 Gray, 15.

Bouvier defines a pauper as "one so poor that he must be supported at public expense." (Bouvier's Law Dic.)

Webster, "so completely destitute of property as to be entitled to maintenance from the public."

Black, "a person so poor that he must be supported at public expense." (Black's Law Dic.)

Abbot, "a poor person is one unable to support himself or herself, and having no one legally liable for his or her support." (Abbott's Law Dic.)

The terms "poor," "poor person," "person in distress," "indigent person," and "pauper" may be used synonymously.

See *Hutchings v. Thompson*, 10 Cushing, 239.

In statutes providing for the relief of the poor, the term is used to describe that class who are entirely destitute and helpless and therefore dependent upon public charity.

It is often used synonymously with "poor person," "person in distress," "indigent person," and "pauper." (Am. & Eng. Enc. of Law, vol. 18, p. 767.)

The term "poor" is used in two senses. It is used in one sense as opposed to the term rich, and it is also used to describe persons so completely destitute of property as to require assistance from the public. Id.

The definitions of the terms "superintendents," "superintendents of the poor," "overseers" and "overseers of the poor," "almshouse" and "state almshouse," are taken from L. 1873, ch. 661, § 14; R. S., 8th ed., p. 2145.

As to meaning of terms, see Statutory Construction Law, § 8.

The remainder of the section is new.

For statute relating to support of poor relatives, see Code of Criminal Procedure, § 914, and following sections.]

§ 3. County superintendents of the poor.—The county superintendents of the poor shall:

1. Have the general superintendence and care of poor persons who may be in their respective counties.

2. Provide and keep in repair suitable alms-houses when directed by the board of supervisors of their county.

3. Establish rules and by-laws for the government and good order of such alms-houses, and for the employment, relief, management and government of the poor therein; but such rules and regulations shall not be valid until approved by the county judge of the county, in writing.

4. Unless a keeper be appointed by the board of supervisors, employ suitable persons to be keepers of such houses, and physicians, matrons and all other necessary officers and servants, and vest such powers in them for the government of such houses, and the poor therein, as shall be necessary, reserving to such poor persons who may be placed under the care of such keepers, matrons, officers or servants, the right of appeal to the superintendents.

5. Purchase all necessary furniture, implements, food and materials for the maintenance of the poor in such houses, and for their employment in labor, and use, sell and dispose of the proceeds of such labor as they shall deem expedient.

6. Prescribe the rate of allowance to be made for bringing poor persons to the county alms-house, subject to such alterations as the board of supervisors may by general resolution make.

7. Authorize the keepers of such houses to certify the amount due for bringing such poor persons; which amount shall be paid by the county treasurer on the production of such certificate, countersigned and allowed by the county superintendents of the poor.

8. Summarily decide any dispute that shall arise concerning the settlement of any poor person, upon a hearing of the parties, and for that purpose may issue subpoenas to compel the attendance of witnesses, with the like powers to enforce such process, as is given to a justice of the peace in an action pending before him; their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested, unless an appeal therefrom shall be taken, as provided in this chapter.

9. Direct the commencement of suits by any overseer of the poor who shall be entitled to prosecute for any penalties, or upon any recognizance, bonds, or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseer, in the name of such superintendents.

10. Draw on the county treasurer for all necessary expenses incurred in the discharge of their duties, which draft shall be paid by such treasurer out of the moneys placed in his hands for the support of the poor.

11. Audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief or transportation of the county poor; and draw on the county treasurer for the amount of the accounts which they shall so audit and settle.

12. Furnish necessary relief to such of the county poor as may require only temporary assistance, or are so disabled that they cannot be safely removed to the county alms-house, or to the county poor who can be properly provided for elsewhere than at the county alms-house at an expense not exceeding that of their support at such alms-house.

13. Render to the board of supervisors of their county, at their

annual meeting, a verified account of all moneys received and expended by them, or under their direction, and of all their proceedings in such manner and form as may be required by the board.

14. Pay over all moneys remaining in their hands, within fifteen days after the expiration of their terms of office, to the county treasurer, or to their successors.

15. Administer oaths and take affidavits in all matters pertaining to their office, and elicit, by examination under oath, statements of facts from applicants for relief.

[R. S., pt. I, ch. 20, tit. I, § 16; R. S., 8th ed., p. 2101, re-enacted with the following change:

The first two clauses of the section are omitted as obsolete.

Subdivision 4 is taken from L. 1851, ch. 532; R. S., 8th ed., p. 2128, but is extended.

Subdivision 11 is a substantial re-enactment of L. 1832, ch. 26; R. S., 8th ed., p. 2122.

Subdivision 12 is new.

Subdivision 15 is taken from L. 1881, ch. 574; R. S., 8th ed., p. 2135, and limited to superintendents of the poor.

For the election, appointment, filling vacancies in office of superintendent of the poor, see County Law, § 210.

For undertaking of superintendent, see County Law, § 211.

See also Statutory Construction Law, § 19.

See also Code of Civil Procedure, § 843.]

§ 4. Appointment of superintendent as keeper of alms-house.—The board of supervisors of any county may, by resolution, appoint as keeper of its county alms-house one of the superintendents of the poor of such county, who shall hold such office until the expiration of his term as superintendent or until the board of supervisors, by resolution, shall determine that he shall no longer act in such capacity. The board of supervisors may fix the compensation such superintendent shall receive for acting as such keeper, and such compensation shall be a county charge. While a resolution of the board of supervisors directing such superintendent to act as keeper of the county alms-house is in force, the superintendents shall not employ a keeper thereof.

[L. 1892, ch. 698, § 1,

re-enacted without change of substance.

Section 2, as amended by L. 1893, ch. 42, is to be repealed without re-enactment, first, because the compensation of superintendents of the poor may be regulated by the board of supervisors, under County Law, § 12, sub. 5.

Second, because the county of Steuben is excepted from the provisions of this section which is wrong, as the law ought to be uniform as to all counties.

Prior to the enactment of the County Law (L. 1892, ch. 686), superintendents of the poor were prohibited to act as keeper of the county almshouse. See L. 1829, ch. 352, as amended by L. 1853, ch. 80, but the repeal of these two laws by the County Law 1892, ch. 686, removed the prohibition. See County Law, § 210.]

§ 5. When they may direct overseers of the poor to take charge of county poor.—Whenever the county superintendents take charge of the support of any county poor person, in counties where no alms-house is provided, they may authorize the overseers of the poor of the town in which such poor person may be, to continue to support him, on such terms and under such regulations as they shall prescribe; and thereafter no moneys shall be paid to such overseers for the support of such poor person, without the order of the superintendents; or the superintendents may remove such poor person to any other town, and there provide for his support, in such manner as they shall deem expedient.

**[R. S., pt. I, ch. 20, tit. I, § 46; R. S., 8th ed., p. 2115,
re-enacted without change of substance.]**

§ 6. Idiots and lunatics.—The superintendents of the poor shall provide for the support of poor persons that may be idiots or lunatics, at other places than in the alms-house, in such manner as shall be provided by law for the care, support and maintenance of such poor persons.

**[R. S., pt. I, ch. 20, tit. I, § 73; R. S., 8th ed., p. 2120,
re-enacted without change of substance.]**

§ 7. Pestilence in alms-house.—Whenever any pestilence of infectious or contagious disease shall exist in any county alms-house or in its vicinity, and the physician thereof shall certify that such pestilence or disease is likely to endanger the health of the persons supported thereat, the superintendents of the poor of such county shall cause the persons supported at such alms-house or any of them, to be removed to such other suitable place in the same county as shall be designated by the board of health of the city, town or village, within which such alms-house shall be, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance, until they can be safely returned to the county alms-house from which they were taken, or otherwise discharged.

[This section is taken from L. 1885, ch. 270, § 6, but all of L. 1885, ch. 270, was repealed by L. 1893, ch. 661, and re-enacted in § 24 of Public Health Law, but it is thought it should be retained in this chapter.]

§ 8. Accounts of county treasurer with towns.—In counties where there are town poor, the county treasurer thereof shall open and keep an account with each town, in which the town shall be credited with all the moneys received from the same, or from its officers, and shall be charged with the moneys paid for the support of its poor. If there be a county alms-house in such county, the superintendents of the poor shall, in each year, before the annual meeting of the board of supervisors, furnish to the county treasurer a statement of the sums charged by them as herein directed, to the several towns for the support of their poor, which shall be charged to such towns, respectively, by the county treasurer in his account.

[R. S., pt. I, ch. 20, tit. I, § 47; R. S., 8th ed., p. 2115, re-enacted without substantial change.]

§ 9. Annual apportionment of town expenses.—In counties having an alms-house, and where there are town poor, the superintendents shall annually, and during the week preceding the

annual meeting of the board of supervisors, make out a statement of all the expenses incurred by them the preceding year for the support of town poor, and of the moneys received therefor, exhibiting the deficiency, if any, in the funds provided for defraying such expenses, and they shall apportion the deficiency among the several towns in proportion to the number and expenses of the town poor of such towns respectively, who shall have been provided for by the superintendents, and shall charge the towns with such proportion; which statement shall be by them delivered to the county treasurer.

[R. S., pt. I, ch. 20, tit. I, § 48; R. S., 8th ed., p. 2115, re-enacted without substantial change.]

§ 10. Tax levy on towns.—At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account kept by him; and if it shall appear that there is a balance against any town, the board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such sum for interest as will reimburse and satisfy any advances that may be made, or that may have been made, by the county treasurer for such town, which moneys, when collected, shall be paid to the county treasurer.

[R. S., pt. I, ch. 20, tit. I, § 49; R. S., 8th ed., p. 2115, re-enacted without substantial change.]

§ 11. Expense of county poor.—The superintendents of the poor shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary during the ensuing year for the support of the county poor; and such board of supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as other contingent expenses of the county, to be paid to the county treasurer and to be by him kept as a separate fund, distinct from the other funds of the county.

**[R. S., pt. I, ch. 20, tit. I, § 50; 8th ed., p. 2115,
re-enacted without substantial change.]**

§ 12. Superintendents' report to the state board of charities.—
The superintendents of the poor of every county shall, on or before the first day of December in each year, make reports covering the year ending September thirtieth, to the state board of charities in such form as the board shall direct, showing the number of the town poor and of the county poor that have been relieved or supported in their county the year preceding October first; the whole expense of such support, the amount paid for transportation of poor persons, and any other items not part of the actual expenses of maintaining the poor, and the allowance made to superintendents, overseers, justices, keepers, matrons, officers and other employes of the superintendents; the actual value of the labor of the poor persons maintained, and the estimated amount saved in the expense of their support in consequence of their labor; the sex and native country of every such poor person, with the causes, either direct or indirect, which have operated to render such persons poor, so far as the same can be ascertained; and shall include in such report a statement of the name and age of, and of the names and residence of the parents of, every poor child who has been placed by them in a family during the year, with the name and residence of the family with whom every such child was placed, and the occupation of the head of the family, together with such other items of information in respect to their character and condition as the state board of charities shall direct.

**[R. S., pt. I, ch. 20, tit. I, § 75; R. S., 8th ed., p. 2120,
L. 1842, ch. 214, § 1, as amended by
L. 1849, ch. 100,
re-enacted with the following changes:**

The superintendents are required to report to the state board of charities instead of to the secretary of state, as by former law. Formerly this report covered the year ending November thirtieth.

This is now changed to September thirtieth. December in the old law is changed to October first, as the fiscal year of the state begins at that time.

The above section has also been extended so that the report will include a statement of the name and age, and of the names and residence of the parents of every poor child who has been placed by them in a family during the year, with the name and residence of the family with whom every such child was placed, and the occupation of the head of the family.】

§ 13. Supervisors may direct as to temporary or outdoor relief to poor. — The board of supervisors of any county may make such rules and regulations as it may deem proper in regard to the manner of furnishing temporary or out-door relief to the poor of the several towns in said county by the overseers of the poor thereof, and also in regard to the amount such overseers of the poor may expend for the relief of each person or family, and after the board of supervisors of any county shall have made such rules and regulations, it shall not be necessary for the overseer of the poor of the towns in said county to procure an order from the supervisor of the town, or the sanction of the superintendent of the poor to expend over ten dollars for the relief of any person or family, unless the board of supervisors of such county shall so direct, but this section shall not apply to the counties of New York and Kings.

【L. 1887, ch. 655, § 2; R. S., 8th ed., p. 2135, with the following changes:

The words “ a justice of the peace ” are omitted and the words “ the supervisor ” are inserted. This change is made to make the section conform to the present law. See L. 1894, ch. 663, which is incorporated in present section 23 of revision. But the exception as to Onondaga county is omitted.】

§ 14. Penalty for neglect or false report. — Any superintendent of the poor or other officer or person having been an officer, who shall neglect or refuse to render any account, statement or

report required by this chapter, or shall willfully make any false report, or shall neglect to pay over any moneys within the time required by law, shall forfeit two hundred dollars to the town or county of which he is or was an officer, and shall be liable to an action for all moneys which shall be in his hands after the time the same should have been paid over, with interest thereon at the rate of ten per centum per annum from the time the same should have been paid over. The state board of charities shall give notice to the district attorney of the county of every neglect to make the report required to be made to that board, and every officer or board to whom any such account, statement, report or payment should have been made, shall give notice to such district attorney of every neglect or failure to make the same; and such district attorney shall, on receiving such notice or in any way receiving satisfactory evidence of such default, prosecute for the recovery of such penalties or moneys in the name of the town or county entitled thereto, and the sum recovered, if for the benefit of the town, shall be paid to the overseer of the poor thereof, and if for the benefit of the county, shall be paid into the county treasury, to be expended by the overseer or superintendent of the poor for the support of the poor of such town or county.

[R. S., pt. I, ch. 20, tit. I, § 53; R. S., 8th ed., p. 2116,
R. S., pt. I, ch. 20, tit. I, §§ 63, 65; R. S., 8th ed., pp. 2118-9.
R. S., pt. I, ch. 20, tit. I, § 78; R. S., 8th ed., p. 2121,
L. 1842, ch. 214, § 2, consolidated and re-enacted with the
following changes:

These former sections prescribe penalties ranging from \$100 to \$250. This section makes a uniform penalty. The district attorney of the county is designated as the proper officer to collect all penalties instead of the various officers mentioned in the law as it now stands.

The provision relating to the disposition of the penalties when collected is new.]

ARTICLE II.

Overseers of the Poor.

Section 20. Relief in counties having alms-house.

21. Expense of removal, and temporary relief.
22. How supported, and when discharged.
23. Temporary relief to persons who can not be removed to alms-house.
24. Relief in counties having no alms-house.
25. Overseer to make monthly examinations and audit accounts.
26. Overseers to keep books of account.
27. Annual report of overseers.
28. Accounts of town officers.
29. Overseers of the poor in cities.

§ 20. Relief in counties having alms-house.—When any person shall apply for relief to an overseer of the poor, in a county having an alms-house, such overseer shall inquire into the state and circumstances of the applicant; and if it shall appear that he is a poor person, and requires permanent relief and support, and can be safely removed, the overseer shall, by written order, cause such poor person to be removed to the county alms-house, or to be relieved and provided for, as the necessities of the applicant may require. If the county be one where the respective towns are required to support their own poor, the overseer shall designate in such order of removal, whether such person be chargeable to the county or not; and if no such designation be made, such person shall be deemed to belong to the town whose overseer made such order.

[R. S., pt. I, ch. 20, tit. I, § 39, as modified by
L. 1834, ch. 236; R. S., 8th ed., p. 2113,
re-enacted without change of substance.]

§ 21. Expense of removal, and temporary relief.— Unless such poor person is properly chargeable to the town, the overseer, in addition to the expense of such removal, shall be allowed such

sum as may have been necessarily paid out, or contracted to be paid, for the relief or support of such poor person, previous to such removal and as the superintendent shall judge was reasonably expended while it was improper or inconvenient to remove such poor person, which sum shall be paid by the county treasurer, on the order of the superintendent.

[R. S., pt. I, ch. 20, tit. I, § 40; R. S., 8th ed., p. 2113, changed so as to allow compensation to overseer for removal only in case the poor person removed is not chargeable to his town.]

§ 22. How supported and when discharged.—The person so removed shall be received by the superintendents, or their agents, and be supported and relieved in a county alms-house until it shall appear to them that such person is able to maintain himself, or, if a minor, until he is bound out or otherwise cared for, as hereinafter provided, when they may, in their discretion, discharge him.

[R. S., pt. I, ch. 20, tit. I, § 41; R. S., 8th ed., p. 2114, without change of substance.

The provision relating to the binding out of a minor is new, and relates to the binding out as provided by § 98 of this chapter.]

§ 23. Temporary relief to persons who can not be removed to alms-house.—If it shall appear that the person so applying requires only temporary relief, or is sick, lame or otherwise disabled so that he can not be conveniently removed to the county alms-house, or that he is a person who should be relieved and cared for at his home under article five of this chapter, the overseers shall apply to the supervisor of the town, who shall examine into the facts and circumstances, and shall, in writing, order such sum to be expended for the temporary relief of such poor person, as the circumstances of the case shall require, which order shall entitle the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified, from the county treasurer, to be by him charged to the county,

if such person be a county charge, if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars shall be expended or paid for the relief of any one poor person, or one family, without the sanction, in writing, of one of the superintendents of the poor of the county, which shall be presented to the county treasurer, with the order of the supervisor, except when the board of supervisors has made rules and regulations as prescribed in section thirteen of this chapter.

[R. S., pt. I, ch. 20, tit. I, § 42, as amended by
L. 1894, ch. 663; R. S., 8th ed., p. 2114,
re-enacted without change of substance.

The words "or that he is a person who should be relieved and cared for at his home, under article five of this chapter" are new.

The words "or she" are omitted. See Stat. Const. L., § 8.

The words "or to such place as shall have been provided by the county superintendent" are omitted for the reason if there be no county alms-house, then the place designated by the county superintendent becomes the county alms-house for all practical purposes.

The words "except where the board of supervisors has made rules and regulations as prescribed in section thirteen of this chapter" are new and are added for uniformity.]

§ 24. Relief in counties having no alms-house.— If application for relief be made in any county where there is no county alms-house, the overseer of the poor of the town where such application is made shall inquire into the facts and circumstances of the case, and with the written approval of the supervisor of such town, make an order in writing for such allowance, weekly or otherwise, as they shall think required by the necessities of such poor person. If such poor person has a legal settlement in such town, or in any other town in the same county, the overseer shall apply the moneys so allowed to the relief and support of such poor person. The money so paid by him, or contracted to be paid, when the poor person had no legal settlement in the town, and charged to the town in which he had a legal settlement, shall be drawn by such

overseer from the county treasurer on producing such order. If such person has no legal settlement in such county, the overseer shall, within ten days after granting to him any relief, give notice thereof, and that such person has no legal settlement in such county, to one of the county superintendents, and until the county superintendents shall take charge of the support of such poor person, the overseer shall provide for his relief and support, and the expense thereof from the time of giving such notice shall be paid to such overseer by the county treasurer, on the production of such order and of proof by affidavit of the time of the giving of such notice, and shall be by him charged to the county.

[R. S. pt. I, ch. 20, tit. I, §§ 43, 44, 45; R. S. 8th ed. p. 2114, re-enacted with the following changes:

The overseers in granting temporary relief in counties having no alms-house are required to have the written approval of the supervisor of the town for the expenditure of money. This is in accordance with the provision of chapter 663 of the laws of 1894, which is now found in section 23, of this chapter, instead of the assistance of a justice of the peace as prescribed by the old law. The provision in regard to the time within which notice is to be given is new.]

§ 25. Overseer to make monthly examinations and audit accounts.— The overseer of the poor of a town or city shall at least once each month, examine into the condition and necessities of each person supported by the town or city out of the county alms-house, and provide within the provisions of this chapter for such allowances, weekly or otherwise as the circumstances may in his judgment require. All accounts for care, support, supplies or attendance, connected with the maintenance of such poor person or family, shall be settled once in three months, and paid if there be funds for that purpose. No bill, claim or account for care, support, supplies or attendance, furnished to poor persons, by order of the overseer of the poor, or otherwise, shall be audited or allowed by the overseer, unless such bill, claim, or account be

verified by the claimant, to the effect that such care, support, supplies or attendance have been actually furnished for such poor persons, that such poor persons have actually received the same, and that the prices charged therefor are reasonable, and not above the usual market rates.

[New.]

§26. Overseers to keep books of account.—Overseers of the poor, who receive and expend money for the relief and support of the poor in their respective towns and cities, shall keep books to be procured at town or city expense, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such relief necessary, so far as the same can be ascertained. They shall also enter upon such books a statement of the name and age, and of the names and residences of the parents of every child who is placed by them in a family, with the name and address of the family with whom every such child is placed, and the occupation of the head of the family. They shall also enter upon books so procured, a statement of all moneys received by them, when and from whom, and on what account received, and of all moneys paid out by them, when and to whom paid and on what authority, and whether to town, city or county poor; also a statement of all debts contracted by them as such overseers, the names of the persons with whom such debts were contracted, the amount and consideration of each item, the names of the persons for whose benefit the debts were contracted, and if the same have been paid, the time and manner of such payment.

The overseers shall lay such books before the board of town auditors, or the common council of the city, at its first annual meeting in each year, together with a just, true and verified itemized account, of all moneys received and expended by them for the use of the poor since the last preceding annual meeting of said board. The board or council shall

compare said account with the entries in the book, and shall examine the vouchers in support thereof, and may examine the overseers of the poor, under oath, with reference to such account. They shall thereupon audit and settle the same, and state the balance due to or from the overseers, as the case may be. Such account shall be filed with the town or city clerk, and at every annual town meeting, the town clerk shall produce such town account for the next preceding year, and read the same, if it be required by the meeting. The overseers of a town shall have such books present each year at the annual town meeting subject to the inspection of the voters of the town, and the entries thereon for the preceding year shall there be read publicly at the time reports of other town officers are presented, if required by a resolution of such meeting.

No credit shall be allowed to any overseers for moneys paid, unless it shall appear that such payments were made necessarily, or pursuant to a legal order.

[R. S., pt. I, ch. 20, tit. I, §§ 51, 52; R. S., 8th ed., p. 2116,
L. 1845, ch. 334, §§ 3, 4; R. S., 8th ed., p. 2124,
L. 1890, ch. 420, §§ 1, 2; R. S., 8th ed. (supp.), p. 3454,
consolidated with the following changes:

The above section has been extended so as to apply to overseers of the poor in a city within the limitations prescribed by section twenty-nine of this chapter, and also so that the books kept by the overseers of the poor will show the name and age, and of the names and residences of the parents of every child who is placed by them in a family, with the name and address of the family with whom every such child is placed, and the occupation of the head of the family.]

§ 27. Annual report of overseers. — Such overseers shall make to the town board, at its second annual meeting in each year, a written report, stating their account as provided in the last section, continued to that date, and any deficiency that may then exist in the town poor fund, with their estimate of the sum which they shall deem necessary for the temporary and out-door

relief and support of the poor in their town for the ensuing year, and in counties where there is no county alms-house, their estimate of such sum as they shall deem necessary to be raised and collected therein for the support of the poor for the ensuing year. If such board shall approve the statement and estimate so made or any part thereof, they shall so certify in duplicate, one of which certificates shall be filed in the office of the town clerk, and the other shall be laid by the supervisor of the town, before the board of supervisors of the county, on the first day of its next annual meeting. The board of supervisors shall cause the amount of such deficiency and estimates, as so certified, together with the sums voted by such town for the relief of the poor therein to be levied and collected in such town, in the same manner as other town charges, to be paid to the overseers of the poor of such town, and the warrants attached to the tax-rolls in such county shall direct accordingly. The moneys so raised shall be received by such overseers, and applied toward the payment of such deficiency, and for the maintenance and support of the poor, for whose relief such estimates were made. The town board shall also, on or before the first day of December, annually certify to the county superintendents, the name, age, sex and native country, of every poor person relieved and supported by such overseers during the preceding year, with the causes which shall have operated to render them such poor persons the amount expended for the use of each person, as allowed by the board, and the amount allowed to each overseer for services rendered in relation to temporary or town relief.

The town board shall include in such annual statement to the county superintendents and the county superintendents shall include in their own report to the state board of charities a statement of the name and age, and of the names and residence of the parents of every child who has been placed by such overseers in a family during the preceding year, with the name and address of the family with whom each child is placed, and the occupation of the head of the family.

[R. S., pt. I, ch. 20, tit. I, §§ 54, 55; R. S., 8th ed., pp. 2116-7,

L. 1845, ch. 334, §§ 4, 7; R. S., 8th ed., pp. 2124-5,

L. 1887, ch. 655, § 1; R. S., 8th ed., p. 2135.

This section is intended to cover the above, and is partly new.

For statute providing for second meeting of the town board, see § 162 of town law.]

§ 28. Accounts of town officers. — The accounts of any town officer for personal or official services rendered by him, in relation to the town poor, shall be audited and settled by the town board and charged to such town. But no allowance for time or services shall be made to any officer for attending any board solely for the purpose of having his account audited or paid.

[R. S., pt. I, ch. 20, tit. I, §§ 57, 67; R. S., 8th ed., p. 2117,

L. 1845, ch. 334, § 5; R. S., 8th ed., p. 2125,

re-enacted with the following change:

The language of the section has been changed so as to include the accounts of any town officer rendered in relation to the poor.

For statute defining what are town charges, see town law, § 180.]

§ 29. Overseers of the poor in cities. — This chapter shall apply to overseers of the poor in cities, except where otherwise specially provided by law. In the absence of such special provision, overseers of the poor in each city shall make their report to the auditing board of such city, by whatever name known, at the beginning of the fiscal year of such city, if such time be fixed, otherwise on the first day of January in each year; the common councils of such cities as shall be liable for the support of their own poor shall yearly determine the sum of money to be appropriated for the ensuing year, and a certified copy of such determination shall be laid before the board of supervisors of the county, who shall cause the same to be assessed, levied, collected and paid to the county treasurer.

[That part of the section which relates to the duties of overseers of the poor in cities is new. The remainder of the section is taken from R. S., pt. I, ch. 20, tit. I, § 56; R. S., 8th ed., p. 2117, without change of substance.]

ARTICLE III.

Settlement and Place of Relief of Poor Persons.**Section 40. Settlements, how gained.**

41. Qualification of last section.
42. Poor persons not to be removed, and how supported.
43. Proceedings to determine settlement.
44. Hearing before superintendents.
45. How to compel towns to support poor persons.
46. Proceedings to determine who are county poor.
47. In counties without alms-house.
48. Decisions to be entered and filed.
49. Appeal to the county court.
50. Penalty for removing.
51. Proceedings to compel support.
52. Liability, how contested.
53. Neglect to contest.
54. Actions, when and how to be brought.
55. Penalty for bringing foreign poor into this state.
56. Poor children under sixteen years of age.

Section 40. Settlements, how gained.— Every person of full age, who shall be a resident and inhabitant of any town or city for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town or city, and shall so remain until he shall have gained a like settlement in some other town or city in this state, or shall remove from this state and remain therefrom one year. A minor may be emancipated from his or her father or mother and gain a separate settlement:

1. If a male, by being married and residing one year separately from the family of his father or mother.

2. If a female, by being married and having lived with her husband; in which case the husband's settlement shall be deemed that of the wife.

3. By being bound as an apprentice and serving one year by virtue of such indentures.

4. By being hired and actually serving one year for wages, to be paid such minor.

[R. S., pt. I, ch. 20, tit. I, § 29; R. S., 8th ed., p. 2110,
re-enacted with the following changes:

The words "or city" in line three are new, and also same words in line five down to the end of sentence are new.

Subdivision 2 has been changed so that a female under age, by marrying, acquires the settlement of her husband. Under the law as it now stands it requires living with her husband for one year.

Only the first sentence of subdivision 4 is re-enacted in this section, the rest of the subdivision is found in § 41.]

§ 41. Qualification of last section.—A woman of full age, by marrying, shall acquire the settlement of her husband. Until a poor person shall have gained a settlement in his or her own right, his or her settlement shall be deemed that of the father, if living, if not, then of the mother; but no child born in any alms-house shall gain any settlement merely by reason of the place of such birth; neither shall any child born while the mother is such poor person, gain any settlement by reason of the place of its birth. No residence of any such poor person in any alms-house, while such person, or any member of his or her family is supported or relieved at the expense of any other town, city, county or state, shall operate to give such poor person a settlement in the town where such actual residence may be.

[R. S., pt. I, ch. 20, tit. I, §§ 29, 30; R. S., 8th ed., p. 2111,
re-enacted with the following changes:

The words "if living, if not, then of the" are new and are intended to make the section more explicit as to the settlement of paupers.]

§ 42. Poor person not to be removed, and how supported.—No person shall be removed as a poor person from any city or town to any other city or town of the same or any other county, nor from any county to any other county except as hereinafter

provided; but every poor person, except the state poor, shall be supported in the town or county where he may be, as follows:

1. If he has gained a settlement in any town or city in such county, he shall be maintained by such town or city.

2. If he has not gained a settlement in any town or city in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor at the expense of the county.

3. If such person be in a county where the distinction between town and county poor is abolished, he shall, in like manner, be supported at the expense of the county, and in both cases, proceedings for his relief shall be had as herein provided.

4. If such poor person be in a county where the respective towns are liable to support their poor, and has gained a settlement in some town of the same county other than that in which he may then be, he shall be supported at the expense of the town or city where he may be, and the overseers shall, within ten days after the application for relief, give notice in writing to an overseer of the town to which he shall belong, requiring him to provide for the support and relief of such poor person.

[R. S., pt. I, ch. 20, tit. I, § 31; R. S., 8th ed., p. 2111, re-enacted with the following changes:

The words "in any town," in line ten, are inserted for the purpose of clearness.

The words "within ten days after the application for relief" are new. The old law simply provided for the giving of notice without prescribing the time within which it was to be given. It is thought that this change is desirable in that it will make the duty of the overseer more definite and certain.

The words "a city," in subdivisions 1, 2 and 4 are new.]

§ 43. Proceedings to determine settlement.—If, within ten days after the service of such notice, the overseer to whom the same was directed, shall not proceed to contest the allegation of the settlement of such poor person, by giving the notice hereinafter directed, he or his successors, and the town which he or they represent, shall be precluded from contesting or denying

such settlement. He may, within the time mentioned, give written notice to the overseer of the town where such person may be, and from whom he has received the notice specified in the last section, that he will appear before the county superintendents, at a place and on a day therein to be specified, which day shall be at least ten days and not more than thirty days from the time of the service of such notice of hearing, to contest the alleged settlement. If the county superintendents fail to appear at the time and place so appointed, they shall, at the request of the overseers of either town appoint some place, and some other day, for the hearing of such allegations, and cause at least five days' notice thereof to be given to such overseers; and no poor person shall be deemed to have gained a settlement, when the proper notices to contest the settlement have been served, until there has been a hearing before the superintendent thereof, and an order by them made and filed in the office of the county clerk, fixing the settlement of such poor person.

[R. S., pt. I, ch. 20, tit. I, § 32; R. S., 8th ed., p. 2111, and L. 1881, ch. 398; R. S., 8th ed., 2135, re-enacted without change of substance.]

§ 44. Hearing before superintendents.—The county superintendents shall convene whenever required by any overseer pursuant to such notice, and shall hear and determine the controversy, and may award costs, not exceeding fifteen dollars, to the prevailing party, which may be recovered in an action in a court of competent jurisdiction. Witnesses may be allowed fees as in courts of record. The decision of the superintendent shall be final and conclusive, unless an appeal therefrom shall be taken as provided by this chapter.

[R. S., pt. I, ch. 20, tit. I, § 33; R. S., 8th ed., p. 2112, re-enacted with the following changes:

The amount of costs to the prevailing party is changed from ten to fifteen dollars.

The words "unless an appeal therefrom shall be taken as provided by this chapter" refer to an appeal as provided for in section forty-nine of this act.]

§ 45. How to compel towns to support poor persons.— The overseers of the poor of the town in which it may be alleged any poor person has gained a settlement, may, at any time after receiving such notice requiring them to provide for such person, take and receive such poor person to their town, and there support him; if they omit to do so, or shall fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such poor person, the charge of giving such notice, and the expense of maintaining such person, after being allowed by the county superintendents, shall be laid before the board of supervisors at their annual meetings from year to year, as long as such expenses shall be incurred, and the supervisors shall annually add the amount of such charges to the tax to be laid upon the town to which such poor person belongs, together with such sum in addition thereto, as will pay the town incurring such expense, the interest thereon, from the time of expenditure to the time of repayment, which sum shall be assessed, levied and collected in the same manner as other charges of such town. Such moneys when collected shall be paid to the county treasurer and be by him credited to the account of the town which incurred the expenses.

[R. S. pt. I, ch. 20, tit. I, § 34; R. S. 8th ed. p. 2112,
re-enacted without change of substance.]

§ 46. Proceedings to determine who are county poor.— The support of any poor person shall not be charged to the county, without the approval of the superintendents. If a poor person be sent to the county alms-house as a county poor person, the superintendents, in counties where there are town poor, shall immediately inquire into the facts, and if they are of opinion that such person has a legal settlement in any town of the county, they shall, within thirty days after such poor person shall have been received, give notice to the overseers of the poor of the town to which such poor person belongs that the expenses of such support will be charged to such town, unless the overseers within such time as the superintendents shall appoint, not less than twenty

days thereafter, show that such town ought not to be so charged. On the application of the overseers, the superintendents shall re-examine the matter and take testimony in relation thereto, and decide the question; which decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter.

[R. S. pt. I, ch. 20, tit. I, § 35; R. S., 8th ed., p. 2112, re-enacted without change of substance.

The provision relating to an appeal is new and relates to the appeal provided for by section 49 of this chapter.]

§ 47. In counties without alms-house.—In counties having no alms-house, no person shall be supported as a county poor person, without the direction of at least one superintendent. In such cases the overseers of the poor, where such person may be, shall, within ten days after granting him relief, give notice thereof and that such person is not chargeable to their town, to one of the superintendents who shall inquire into the circumstances, and if satisfied that such poor person has not gained a legal settlement in any town of the county, and is not a state poor person, he shall give a certificate to that effect, and that such poor person is chargeable to the county. He shall report every such case to the board of superintendents at their next meeting, who shall affirm such certificate, or, on giving at least eight days' notice to the overseers of the poor of the town interested may annul the same. After hearing the allegations and proofs in the premises, if the superintendent to whom the overseers have given such notice shall neglect or refuse to give such certificate, the overseers may apply to the board of superintendents, who shall summarily hear and determine the matter, and whose decision shall be conclusive, unless an appeal therefrom shall be taken in the manner provided in this chapter. Such appeal may also be taken from the refusal of one superintendent to grant such certificate when there is but one superintendent in the county.

[R. S., pt. I, ch. 20, tit. I, §§ 36, 37; R. S., 8th ed., pp. 2112-3, re-enacted with the following changes:

The law as it now stands § 36 requires the overseers to give immediate notice to the superintendents, where they have furnished relief to a poor person who they claim is not chargeable to their town.

By the proposed revision this notice is to be given within ten days by the overseer that the support of such poor person is not chargeable to their town. Superintendents are required by revision to give eight days' notice to the overseers of a town before deciding that a poor person is to be charged to their town. The old law only required due notice, so this change seems desirable. The provision of this section relating to appeals is new and refers to the appeal provided for by section 49 of this chapter. The words "and is not a state poor person" are new.】

§ 48. Decisions to be entered and filed.—The decisions of county superintendents in relation to the settlement of poor persons, or to their being a charge upon the county, shall be entered in books to be provided for that purpose, and certified by the signature of such of the superintendents as make the same; and a duplicate thereof, certified in the same manner, shall be filed in the office of the county clerk within thirty days after making such decision.

【R. S., pt. 1, ch. 20, tit. I, § 38; R. S., 8th ed., p. 2113, re-enacted with the following changes:

The words "such original duplicate, or a copy thereof duly certified, shall be conclusive evidence of the facts therein contained," are omitted for the reason that they add nothing to the section.】

§ 49. Appeal to the county court.—Any or either of the parties interested in a decision of the superintendent of the poor, or in any dispute that shall arise concerning the settlement of any poor person, may appeal from such decision to the county court of the county in which such decision shall be made, by serving upon the other parties interested therein, within thirty days after service upon the appellant of a notice of the same, a notice of

appeal, which shall be signed by the appellant or his attorney, and which shall specify the grounds of the appeal. The hearing of such appeal may be brought on by either party in or out of term, upon notice of fourteen days. Upon such appeal a new trial of the matters in dispute shall be had in the county court without a jury, and a decision of the county court therein shall be final and conclusive, and the same costs shall be awarded as are allowed on appeals to said court.

For the purposes of this chapter the county court shall be deemed open at all times.

[L. 1872, ch. 38, §§ 1, 5; R. S., 8th ed., pp. 2130-31, re-enacted with the following change:

The words "for the purpose of this chapter the county court shall be deemed open at all times" are new.]

§ 50. Penalty for removing.—Any person who shall send, remove or entice to remove, or bring, or cause to be sent, removed or brought, any poor or indigent person, from any city, town or county, to any other city, town or county, without legal authority, and there leave such person for the purpose of avoiding the charge of such poor or indigent person upon the city, town or county from which he is so sent, removed or brought or enticed to remove, shall forfeit fifty dollars, to be recovered by and in the name of the town, city or county to which such poor person shall be sent, brought or removed, or enticed to remove, and shall be guilty of a misdemeanor.

[R. S., pt. I, ch. 20, tit. I, § 58; R. S., 8th ed., p. 2117, re-enacted with following change: Section framed so as to make a person liable who removes a poor person from one town or city to another town or city for the purpose of avoiding the charge of such poor person upon the town or city from which he was removed. For provision prescribing the punishment for a violation of this section see Penal Code, § 675a.]

§ 51. Proceedings to compel support.— A poor person so removed, brought or enticed, or who shall of his own accord come or stray from one city, town or county into any other city, town or county not legally chargeable with his support, shall be maintained by the county superintendents of the county where he may be. They may give notice to either of the overseers of the poor of the town, or city from which he was brought or enticed, or came as aforesaid, if such town or city be liable for his support, and if there be no town or city in the county from which he was brought or enticed or came liable for his support, then to either of the county superintendents of the poor of such county, within ten days after acquiring knowledge of such improper removal, informing them of such improper removal, and requiring them forthwith to take charge of such poor person. If there be no overseers or superintendents of the poor in such town, city or county, such notice shall be given to the person, by whatever name known, who has charge and care of the poor in such locality.

[R. S., pt. I, ch. 20, tit. I, § 59, amended by L. 1888, ch. 486, L. 1885, ch. 546; R. S., 8th ed., p. 2117, re-enacted with the following changes:

The words “ within ten days after acquiring knowledge of such improper removal, and of the town or county liable for the support of the person so removed ” are new.

The section has been extended so as to include a city.

The amendment to R. S., pt. I, ch. 20, tit. I, § 59, by L. 1888, ch. 486, is omitted and the section re-enacted so as to restore the amendment of 1885, ch. 546.]

§ 52. Liability, how contested. — The county superintendents, or overseers, or other persons to whom such notice may be directed may, after the service of such notice, take and remove such poor person to their county, town or city, and there support him, and pay the expense of such notice, and of the support of such person; or they shall, within thirty days after receiving such notice, by a written instrument under their hands, notify the county superintendents from whom such notice was received, or

either of them, that they deny the allegation of such improper enticing or removal, or that their town, city or county is liable for the support of such poor person.

[R. S., pt. I, ch. 20, tit. I, § 60; R. S., 8th ed., p. 2118, as am. by L. 1888, ch. 486, superseding L. 1885, ch. 546,

re-enacted with the following change:

The section has been extended so as to include a city.]

§ 53. Neglect to contest. — If there shall be a neglect to take and remove such poor person, and to serve notice of such denial within the time above prescribed, the county superintendents and overseers, respectively, whose duty it was so to do, their successors, and their respective counties, cities or towns, shall be deemed to have acquiesced in the allegations contained in such first notice, and shall be forever precluded from contesting the same, and their counties, cities and towns, respectively, shall be liable for the expenses of the support of such poor person, which may be recovered from time to time, by county superintendents incurring such expenses, in the name of their county in actions against the county, city or town so liable.

[R. S., pt. I, ch. 20, tit. I, § 61; R. S., 8th ed., p. 2118.
re-enacted with the following change:

The section has been extended so as to include a city.]

§ 54. Actions, when and how to be brought.— Upon service of any such notice of denial, the county superintendents upon whom the same may be served, shall, within three months, commence an action in the name of their county, against the town, city or county so liable for the expenses incurred in the support of such poor person, and prosecute the same to effect; if they neglect to do so, their town, city or county, shall be precluded from all claim against the town, city or county to whose officers such first notice was directed.

[R. S., pt. I, ch. 20, tit. I, § 62; R. S., 8th ed., p. 2118,
re-enacted with the following change:

The section has been extended so as to include a city.]

§ 55. Penalty for bringing foreign poor into this state.— Any person who shall knowingly bring or remove, or cause to be brought or removed, any poor person from any place without this state, into any county, city or town within it, and there leave or attempt to leave such poor person, with intent to make any such county, city or town, or the state, wrongfully chargeable with his support, shall forfeit fifty dollars, to be recovered by an action in a court of competent jurisdiction in the county, and in the name of the county, city or town into which such poor person shall be brought, and shall be obliged to convey such person out of the state, or support him at his own expense, and shall be guilty of a misdemeanor, and the court or magistrate before whom any person shall be convicted for a violation of this section shall require of such person satisfactory security that he will within a reasonable time, to be named by the court or magistrate, transport such person out of the state, or indemnify the town, city or county for all charges and expenses which may be incurred in his support; and if such person shall refuse to give such security when so required, the court or magistrate shall commit him to the common jail of the county for a term not exceeding three months.

[L. 1831, ch. 277, § 1; R. S., 8th ed., p. 2122,

re-enacted with the following changes:

1. Extended so as to include a city.
2. The word “ wrongfully ” is inserted.
3. The words “ with intent to make any such county, city or town, or the state, chargeable with his support,” are inserted.
4. The words “ in a court of competent jurisdiction,” are inserted in place of the words “ in justices’ court.”
5. The words “ and shall be guilty of a misdemeanor,” are new.
6. The words “ court or magistrate,” are inserted in place of the word “ justice.”]

§ 56. Poor children under sixteen years of age.— No justice of the peace, board of charities, police justice, or other magistrate, or court, shall commit any child under sixteen years of age, as a vagrant, truant or disorderly person, to any jail or county alms-

house, but to some reformatory, or other institution, as provided for in the case of juvenile delinquents; and when such commitments are made, the justice of the peace, board of charities, police justice, or other magistrate or court making the same, shall immediately give notice to the superintendents of the poor or other authorities having charge of the poor of the county in which the commitment was made, giving the name and age of the person committed, to what institution, and the time for which committed; nor shall any county superintendents, overseers of the poor, board of charity, or other officer, send any child under the age of sixteen years, as a poor person, to any county alms-house, for support and care, or retain any such child in such alms-house, but shall provide for such child or children in families, orphan asylums, hospitals, or other appropriate institutions for the support and care of children as provided by law, except that a child under two years of age may be sent with its mother, who is a poor person, to any county alms-house, but not longer than until it is two years of age. The boards of supervisors of the several counties, and board of estimate and apportionment of the county of New York, and the appropriate board or body in the county of Kings shall take such action in the matter as may be necessary to carry out the provisions of this section. When any such child is committed to an orphan asylum or reformatory, it shall, when practicable, be committed to an asylum or reformatory that is governed or controlled by persons of the same religious faith as the parents of such child.

[L. 1831, ch. 277, §§ 4, 5, 6; R. S., 8th ed., p. 2122,

L. 1875, ch. 173, §§ 1, 2; as amended by L. 1876, ch. 266,

L. 1875, ch. 173, §§ 1, 2; as amended by L. 1876, ch. 266;
R. S., 8th ed., p. 2132,

L. 1878, ch. 404, as amended by L. 1879, ch. 240; R. S., 8th ed.,
p. 2133.

This section is intended to cover all of the above acts and to make one statement of all of them that should be retained. The section has been changed so that no child under sixteen years of age shall be sent to an alms-house, except when it is sent with its mother, and then not longer than until such child shall reach the age of two years.]

ARTICLE IV.

Support of Bastards.

Section 60. Penalty for removing mother of bastard; how supported after removal.

61. Mother and child poor persons; proceedings against county or town from which she was removed.

62. Mother and bastard; how to be supported.

63. Mother and child not to be removed without her consent.

64. Overseers to notify superintendents of cases of bastardy; when county chargeable.

65. Duty of superintendents to provide for mother and child.

66. Until taken charge of by superintendents, to be supported by overseers.

67. Overseers of towns to support bastard and mother, whether chargeable or not.

68. Moneys received by overseers from parents of bastard how applied, and accounted for.

69. When moneys received on account of bastard chargeable to county, how to be disposed of.

70. Disputes concerning settlement of bastard, how determined.

71. Proceedings when bastard is chargeable to another town.

72. Mode of ascertaining sum to be allowed for support of bastard.

73. When mother and child to be removed to county alms-house.

74. Compromise with father of bastard; when mother may receive money.

75. Compromise with putative fathers in New York.

§ 60. Penalty for removing mother of bastard; how supported after removal.— If the mother of any bastard, or of any child

likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this state, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person so bringing, removing or enticing such mother to remove, as are provided in the case of the fraudulent removal of a poor person. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.

[R. S., pt. I, ch. 20, tit. IV, § 3; R. S., 8th ed., p. 2211, with the following change:

This section has been extended so as to include a city or town. This in conformity with like changes made in this chapter.

For penalty for removing poor person, see section 50 of this chapter, and Penal Code, § 675a.]

§ 61. Mother and child poor persons; proceedings against county or town from which she was removed.—Such mother and her child shall, in all respects, be deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, for the expense of supporting her and her child, as are provided in the case of poor persons fraudulently or clandestinely removed; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother.

[R. S., pt. I, ch. 20, tit. VI, § 4; R. S., 8th ed., p. 2211, with the following change, extended so as to include a city.]

§ 62. Mother and bastard; how to be supported.—The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after

it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town, and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

【R. S., pt. I, ch. 20, tit. VI., § 53; R. S., 8th ed., p. 2211,
with the following changes:

Section has been extended so as to include a city.】

§ 63. Mother and child not to be removed without her consent.— The mother and her child shall not be removed from any city or town to any other city or town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county, city or town liable for their support, by the county superintendents of such county or the overseers of the poor of such city or town.

【R. S., pt. I, ch. 20, tit. VI, § 54; R. S., 8th ed., p. 2212,
with the following changes:

But has been extended so as to include a city.】

§ 64. Overseers to notify superintendents of cases of bastardy; when county chargeable.— The overseers of the poor of any city or town where a woman shall be pregnant with a child, likely to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

【R. S., pt. I, ch. 20, tit. VI, § 55; R. S., 8th ed., p. 2212,
with the following change:

But has been extended so as to include a city.】

§ 65. Duty of superintendents to provide for mother and child.—The county superintendents shall provide for the support of such bastard and its mother; in the same manner as for the poor of such county.

[R. S., pt. I, ch. 20, tit. VI, § 56; R. S., 8th ed., p. 2212, without change.]

§ 66. Until taken charge of by superintendents, to be supported by overseers.—Until the county superintendents take charge of and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the city or town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a poor person chargeable to the county, who cannot be conveniently removed to the county alms-house.

[R. S., pt. I, ch. 20, tit. VI, § 57; R. S., 8th ed., p. 2212, with the following change:

The word "pauper" is omitted and the words "poor person" inserted in lieu thereof. The word "poor-house" is changed to "alms-house;" both of these changes are made for uniformity. The section has also been extended so as to include a city.]

§ 67. Overseers of towns to support bastard and mother, whether chargeable or not.—Where a woman shall be pregnant with a child likely to be born a bastard, or to become chargeable to a city or town, or where a bastard shall be born chargeable, or likely to become chargeable to a city or town, the overseers of the poor of the city or town where such bastard shall be born, or likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by this chapter to provide for and support the poor of their city or town.

[R. S., pt. I, ch. 20, tit. VI, § 58; R. S., 8th ed., p. 2212, with the following change:

Extended so as to include a city.]

§ 68. Moneys received by overseers from parents of bastard, how applied and accounted for.—Where any money shall be paid to any overseer, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard, the overseers may expend the same directly, in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath, to the board of town auditors, or to the proper auditing board of a city, at the same time that other town or city officers are required to account for expenditures of all moneys so received by them, and shall pay over the balance in their hands, and under like penalties, as are provided by this chapter, in respect to the poor moneys in their hands.

[R. S., pt. I, ch. 20, tit. VI, § 59; R. S., 8th ed., p. 2212, with the following change:

The section has been extended so as to include overseers of the poor of a city.]

§ 69. When moneys received on account of bastard chargeable to county; how to be disposed of. — All moneys which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall within fifteen days after the receipt of any such moneys, pay the same into the county treasury. Any officer neglecting to make such payment shall be liable to an action by and in the name of the county, for all moneys so received and withheld, with interest from the time of receipt, at the rate of ten per centum; and shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county.

[R. S., pt. I, ch. 20, tit. VI, § 60; R. S., 8th ed., p. 2212, with the following change:

The action is to be brought in the name of the county instead of in the name of the county treasurer. This change is made for uniformity. The district attorney will prosecute the action as provided for in section 14 of this chapter.]

§ 70. Disputes concerning settlement of bastard, how determined.—When a dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any city or town, the same shall be determined by the county superintendents of the poor, upon a hearing of the parties interested, in the same manner and with the same effect as they are authorized to determine the settlement of a poor person under this chapter.

[R. S., pt. I, ch. 20, tit. VI, § 61; R. S., 8th ed., p. 2213,
with the following change:

Extended so as to include a city.]

§ 71. Proceedings when bastard is chargeable to another town.—When a bastard shall be born, or be likely to be born in a town or city, when the legal settlement of the mother is in another town or city of the same county, which is required by law to support its own poor, the overseers of the poor of the town or city where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town or city where the mother's settlement may be, as is required in the case of a person becoming a poor person, under the like circumstances, and the same proceedings shall be had, in all respects, to determine the liability of such town or city as in the case of poor persons.

The overseers of the town or city to which the mother of such bastard belongs may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town or city to which the mother belongs shall be liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the moneys expended, on the town or city to which such mother belongs, and

shall be collected in the same manner as provided for poor persons supported under the same circumstances, and the moneys so collected, shall be paid to the county treasurer, for the benefit of, and to be credited to, the town which incurred such expenses.

[R. S., pt. I, ch. 20, tit. VI, §§ 62, 63, 64; R. S., 8th ed., p. 2213, combined with the following change:

Extended so as to include a city.]

§ 72. Mode of ascertaining sum to be allowed for support of bastard.— When any town is required to support a bastard, and its mother, whether the mother have a settlement in such town or not, and no moneys shall be received from the putative father or from the mother to defray the expense of such support, the overseers of the poor shall apply to the supervisor of the town and obtain an order for the support of such bastard, and the sustenance of its mother during her confinement and recovery therefrom, and the sum to be allowed therefor, in the same manner as is required in the case of poor persons, and the moneys paid or contracted to be paid by the overseer, pursuant to such order, shall be paid by the county treasurer in the same manner as for poor persons, and be charged to the town to whose officers such payment shall be made.

[R. S., pt. I, ch. 20, tit. VI, § 65; R. S., 8th ed., p. 2213, with the following change:

The words “ the supervisor of the town ” inserted in place of the words “ justice of the peace.” This change is in accordance with the present law. See L. 1894, ch. 663, which is incorporated in present section 23 of this chapter.]

§ 73. When mother and child to be removed to county alms-house.— If there be a county alms-house in any county where the towns are required to support their own poor, the overseers of the poor of a town where a bastard shall be born, or shall be likely to be born, may, with the approval of the county superintendents or any two of them, and when the situation of the mother will allow it, remove the mother of such bastard, with her child, to such alms-house, in the same manner as poor persons may be

removed; the expenses of which removal shall be defrayed in like manner, and such mother and her child shall be considered as poor of the town so liable for their support, and the expense shall in like manner be estimated and paid.

[R. S., pt. I, ch. 20, tit. VI, § 66; R. S., 8th ed., p. 2214,
with the following change:

The words "or other place provided for the reception of the poor" are omitted.]

§ 74. Compromise with father of bastard; when mother may receive money.—Superintendents and overseers of the poor may make such compromise and arrangements with the putative father of any bastard child within their jurisdiction, relative to the support of such child, as they shall deem equitable and just, and thereupon discharge such putative father from all further liability for the support of such bastard.

Whenever a compromise is made with the putative father of a bastard child, the mother of such child, on giving security for the support of the child, and to indemnify the city and county or the town and county, from the maintenance of the child, to the satisfaction of the officers making the compromise, shall be entitled to receive the moneys paid by such putative father as the consideration of such compromise. If the mother of such child shall be unable to give the security, but shall be able and willing to nurse and take care of the child, she shall be paid the same weekly allowance for nursing and taking care of the child, out of the moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated or reduced, as in the case of an order of filiation.

[L. 1832, ch. 26, § 2; R. S., 8th ed., p. 2123,

L. 1838, ch. 202, §§ 1, 2; R. S., 8th ed., p. 2215,

L. 1832 and 1838,

re-enacted without substantial change,

L. 1828, ch. 6; R. S., 8th ed., p. 2214, is to be repealed and not re-enacted, as it is now sufficiently covered by § 840 of Code of Crim. Pro.]

§ 75. Compromise with putative fathers in New York.—The commissioners of public charities of the city of New York, or any two of them, may make such compromise and arrangements with the putative fathers of bastard children in said city, relative to the support of such children, as they shall deem equitable and just, and thereupon may discharge such putative fathers from all further liability for the support of such bastards.

[R. S., part I, ch. 20, tit. VI, § 68; R. S., 8th ed., p. 2214, with the following change:

The commissioners of public charities are substituted for the commissioners of the alms-house.]

ARTICLE V.

Soldiers, Sailors and Marines.

Section 80. Relief to soldiers and their families.

81. Post to give notice that it assumes charge.

82. Poor or indigent soldiers, et cetera, without families.

83. Burial of soldiers, sailors or marines.

84. Headstones to be provided.

§ 80. Relief to soldiers and their families. — No poor or indigent soldier, sailor, or marine, who was in the military or naval service of the United States, in the late war of the rebellion or in the last war with Mexico, nor his family nor the families of any who may be deceased, shall be sent to any alms-house, except with the approval of the commander and quartermaster of the post of the Grand Army of the Republic of the city or town where such persons reside, or the nearest post thereto, but they shall be relieved and provided for at their homes in the city or town where they may reside, so far as practicable, provided such soldier, sailor or marine or the families of those deceased, are, and have been, residents of the state for one year; and all public officers having power to grant or allow relief to poor persons shall grant and allow all necessary relief to such soldiers, sailors and marines, and their families, and to the families of such as shall have died, whenever the necessity for such relief is known to exist; and they

shall also grant such relief upon the written request of the commander and quartermaster of any post of the Grand Army of the Republic of the city or town, made upon the written recommendation of the relief committee of such post; or if there be no post in a town or city in which it is necessary that such relief should be granted, upon the like request of the commander and quartermaster and recommendation of the relief committee of a Grand Army post located in the nearest town or city, to the town or city, requested to so furnish relief, and such written request and recommendation shall be sufficient authority for the expenditures so made.

[L. 1887, ch. 706, §§ 1, 2, 5, as amended by
L. 1888, ch. 261; R. S., 8th ed., p. 2136,
without substantial change.]

§ 81. Post to give notice that it assumes charge. — The commander of any such post which shall undertake to supervise relief of poor veterans or their families, as herein provided, before his acts shall become operative in any town, city or county, shall file with the clerk of such town, city or county, a notice that such post intends to undertake such supervision of relief, which notice shall contain the names of the relief committee, commander, and other officers of the post; and also an undertaking to such city, town or county, with sufficient and satisfactory sureties for the faithful and honest discharge of his duties under this article; such undertaking to be approved by the treasurer of the city or county, or the supervisor of the town, from which such relief is to be received. Such commander shall annually thereafter, during the month of October, file a similar notice with said city or town clerk, with a detailed statement of the amount of relief requested by him during the preceding year, with the names of all persons for whom such relief shall have been requested, together with a brief statement in each case from the relief committee upon whose recommendation the relief was requested.

**[L. 1887, ch. 706, §§ 3 and 5, as amended by
L. 1888, ch. 261; R. S., 8th ed., p. 2136,
with the following changes:**

Post must furnish an undertaking. Under the former law the auditing board might, in their discretion, require an undertaking. Section also prescribes the officers who shall approve of the undertaking.]

§ 82. Poor or indigent soldiers, et cetera, without families. — Poor or indigent soldiers, sailors or marines provided for in this article, who are not insane, and who have no families or friends with whom they may be domiciled, may be sent to a soldiers' home. Any poor or indigent soldier, sailor or marine provided for in this chapter, or any member of the family of any living or deceased soldier, sailor or marine, who may be insane, shall, upon recommendation of the commander and relief committee of such post of the Grand Army of the Republic, within the jurisdiction of which the case may occur, be sent to the proper state hospital for the insane.

**[L. 1887, ch. 706, last two sentences of § 5; R. S., 8th ed., p. 2137,
without substantial change.]**

§ 83. Burial of soldiers, sailors or marines.— The board of supervisors in each of the counties shall designate some proper person or authority, other than that designated for the care of poor persons, or the custody of criminals, who shall cause to be interred, the body of any honorably discharged soldier, sailor or marine, who served in the army or navy of the United States during the late war of the rebellion, or in the last war with Mexico, who shall hereafter die without leaving means sufficient to defray his funeral expenses, but such expenses shall in no case exceed thirty-five dollars. If the deceased has relatives or friends who desire to conduct the burial, but are unable or unwilling to pay the charges therefor, such sum shall be paid by the county treasurer upon due proof of the claim, and of the death and burial of

the soldier, sailor or marine to the person so conducting such burial. Such interment shall not be made in a cemetery or cemetery plot used exclusively for the burial of poor persons deceased.

[L. 1881, ch. 203, § 1, as amended by
L. 1885, ch. 34, superseding
L. 1883, ch. 247, § 1; R. S., 8th ed., p. 2134,
and the first sentence of § 2 of L. 1881, ch. 203,
as amended by L. 1895, ch. 783, superseding
L. 1887, ch. 216, L. 1884, ch. 319, and L. 1883, ch. 247, § 2; R. S.
8th ed., p. 2134,
with the following changes:

In line eight the words "last war with Mexico" are substituted for the words "or in the war with Mexico in the years eighteen hundred and forty-six, eighteen hundred and forty-seven, and eighteen hundred and forty-eight."

The last sentence of the section is taken from § 2 of L. 1881, ch. 203, as amended by L. 1895, ch. 783, and is without change of substance.]

§ 84. Headstones to be provided.—The grave of any such deceased soldier, sailor or marine shall be marked by a headstone containing the name of the deceased, and, if possible, the organization to which he belonged, or in which he served; such headstone shall cost not more than fifteen dollars, and shall be of such design and material as shall be approved by the board of supervisors, and the expense of such burial and headstone as provided for in this article, shall be a charge upon, and shall be paid by the county in which the said soldier, sailor or marine shall have died; and the board of supervisors of such county is hereby authorized and directed to audit the account and pay the expense of such burial in the same manner as other accounts against said county are audited and paid; provided, however, that in case such deceased soldier, sailor or marine shall be at the time of his death an inmate of any state institution, including state hospitals and soldiers' homes, or any institution supported by the state and supported at public expense therein, the expense of such burials

and headstones shall be a charge upon the county of his legal residence.

[L. 1881, ch. 203, § 2, as amended by
L. 1895, ch. 783, superseding
L. 1887, ch. 216, L. 1884, ch. 319, and L. 1883, ch. 247, § 2;
R. S., 8th ed., p. 2134,
without change of substance.]

ARTICLE VI.

State Poor.

- Section 90.** Who are state poor, and how relieved.
91. Notice to be given to county clerks of location of state alms-house.
92. State poor to be conveyed to state alms-houses.
93. Punishment for leaving alms-house.
94. Expenses for support.
95. Duties of keeper; superintendent of state and alien poor to keep record of names.
96. Visitation of alms-houses.
97. Insane poor.
98. Care of and binding out of state poor children.
99. Transfer to other states or countries.
100. Power of superintendent of state and alien poor.
101. Indian poor persons; removal to county alms-houses.
102. Contracts for support of Indian poor persons.
103. Expenses for support of Indian poor persons.
104. Duty of keepers; superintendent of state and alien poor to keep record.

§ 90. Who are state poor, and how relieved.— Any poor person who shall not have resided sixty days in any county in this state within one year preceding the time of an application by him for aid to any superintendent or overseer of the poor, or other officer charged with the support and relief of poor persons, shall be deemed to be a state poor person, and shall be maintained as in this article provided. The state board of charities shall, from

time to time, on behalf of the state, contract for such time, and on such terms as it may deem proper, with the authorities of not more than fifteen counties or cities of this state, for the reception and support, in the alms-houses of such counties or cities respectively, of such poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, employment, treatment and care of such poor persons, and for their discharge. Every such contract shall be in writing, and filed in the office of such board. Such alms-houses, while used for the purposes of this article, shall be appropriately designated by such board and known as state alms-houses. Such board may, from time to time, direct the transfer of any such poor person from one alms-house to another, and may give notice from time to time to counties, to which alms-houses they shall send poor persons.

[L. 1873, ch. 661, § 1, 2, as amended by
L. 1874, ch. 464; R. S., 8th ed., p. 2142,

The words " Every poor person who is blind, lame, old, impotent or decrepit, or in any other way disabled or enfeebled so as to be unable by work to maintain himself " are omitted and subject to the limitation of this section. The general definition of a poor person as prescribed by section two of this chapter is to govern in determining who are poor persons.]

§ 91. Notice to be given to county clerks of location of state alms-houses.— Such board shall give notice to the county clerks of the several counties of the location of each of such alms-houses, who thereupon shall cause such notice to be duly promulgated to the superintendents and overseers of the poor, and other officers charged with the support and relief of poor persons in their respective counties. A circular from the superintendent of state and alien poor appointed by such board shall accompany such notice, giving all necessary information respecting the commitment, support and care of the state poor in such alms-houses, according to the provisions of this article.

[L. 1873, ch. 661, § 3; R. S., 8th ed., p. 2143,
re-enacted with the following change:

The state board of charities has had for several years an appointee known as the superintendent of state and alien poor. This new officer exercises the powers in regard to state poor that were formerly possessed by the secretary of such board. It was thought proper that the practice established by this department should be incorporated in this revision, and thus give statutory recognition to such office. To accomplish this result sections 91, 92, 95, 96, 97, 98, 99, 100 and 104 are changed by inserting the words "superintendent of state and alien poor" in the place of the words "the secretary of the state board of charities."】

§ 92. State poor to be conveyed to state alms-houses.— County superintendents of the poor, or officers exercising like powers, on satisfactory proof being made that the person so applying for relief as a state poor person, as defined by this chapter, is such poor person, shall, by a warrant issued to any proper person or officer, cause such person, if not a child under sixteen years of age, to be conveyed to the nearest state alms-house, where he shall be maintained until duly discharged, but a child under two years of age may be sent with its mother, who is a state poor person, to such state alms-house, but not longer than until it is two years of age. All testimony taken in any such proceeding shall be forwarded, within five days thereafter, to the superintendent of state and alien poor, and a verified statement of the expenses incurred by the person in making such removal, shall be sent to such superintendent. Such board shall examine and audit the same, and allow the whole, or such parts thereof, as have been actually and necessarily incurred; provided that no allowance shall be made to any person for his time or service in making such removal. All such accounts for expense, when so audited and allowed, shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

【L. 1873, ch. 661, § 4, as amended by
L. 1875, ch. 308; R. S., 8th ed., p. 2143,
with the following changes:

This section has been limited by the insertion of the following words: "but a child under two years of age may be sent with its mother, who is a state poor person, to such state alms-house, but not longer than until it is two years of age." This is in conformity with the same changes made in § 56 of this chapter.

And also with the change indicated in the note to § 91 of this article.】

§ 93. Punishment for leaving alms-house.—An inmate of a state alms-house, who shall leave the same without being duly discharged, and within one year thereafter is found in any city or town of this state soliciting public or private aid, shall be punished by confinement in the county jail of the county in which he is so found, or in any work-house of this state in such county, for a term not exceeding three months, by any court of competent jurisdiction; and it shall be the duty of every superintendent and overseer of the poor and other officers charged with the support and relief of poor persons, to cause, as far as may be, the provisions of this section to be enforced.

【L. 1873, ch. 661, § 13; R. S., 8th ed., p. 2144,
without change of substance.】

§ 94. Expenses for support.—The expenses for the support, treatment and care of all poor persons who shall be sent as state poor to such alms-houses, shall be paid quarterly, on the first day of January, April, July and October in each year, to the treasurer of the county, or proper city officers incurring the same, by the treasurer of the state, on the warrant of the comptroller; but no such expenses shall be paid to any county or city, until an account of the number of persons thus supported, and the time that each shall have been respectively maintained, shall have been rendered in due form and approved by the state board of charities.

【L. 1873, ch. 661, § 5; R. S., 8th ed., p. 2143,
without change of substance.】

§ 95. Duty of keepers; superintendent of state and alien poor to keep record of names.— The keeper or principal officer in

charge of such alms-house shall enter the names of all persons received by him pursuant to this article, with such particulars in reference to each as the board, from time to time may prescribe, together with the name of the superintendent by whom the commitment was made, in a book to be kept for that purpose. Within three days after the admission of any such person, such keeper or principal officer shall transmit the name of such person, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such person shall in like manner and within the time above named, be thus sent to such superintendent. Such superintendent shall cause the names of such persons in each such alms-house furnished as above provided for, to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in such alms-house, and by personal examination of the several inmates thereof, and in any other manner the board may from time to time direct; and he shall furnish the board, in tabulated statements, on or before the second Tuesday in January, annually, the number of inmates maintained in each and all of such alms-houses during the preceding year, the number discharged, transferred to other institutions, bound out or removed from the state, and the number who died or left without permission during the year, with such other particulars and information as the board may require.

[L. 1873, ch. 661, § 6; R. S., 8th ed., p. 2143,

with the change indicated in the note to § 91 of this article.]

§ 96. Visitation of alms-houses.—The superintendent of state and alien poor shall visit and inspect each of such alms-houses, at least once in each three months, and at such other times as he may deem expedient, or as the board may direct. And he shall also visit and inspect all alms-houses in which are Indians who are poor persons at least once a year. For the purposes of all such inspections, the superintendent shall possess all the powers of a member of the board and the further powers hereinafter men-

tioned. The officer in charge of each and every alms-house shall give to such superintendent free access to all parts of the ground, buildings, hospitals and other arrangements connected therewith, and to every inmate thereof, and extend to him the same facilities for the inspection of such alms-house and its inmates, as is required by law to be extended to such board of commissioners; and, in default thereof, such officer shall be subject to the same penalty as if access were denied to any member of the board. Such board shall also cause each of such alms-houses to be visited periodically by some of its members, who shall examine into their condition and management, respectively, and make such report thereof to the board as may be deemed proper.

[L. 1873, ch. 661, §§ 7, 8; R. S., 8th ed., p. 2144,

L. 1894, ch. 436, § 5,

consolidated with the change indicated in the note to § 91 of this article.]

§ 97. Insane poor.—If any inmate of any such alms-house becomes insane, such superintendent of state and alien poor shall cause his removal to the appropriate state hospital for the insane, and he shall be received by the officer in charge of such hospital, and be maintained therein until duly discharged.

[L. 1873, ch. 661, § 9; R. S., 8th ed., p. 2144,

with the change indicated to the note to § 91 of this article.

Only that part of § 9 which is still applicable to the removal of the insane in a state alms-house is retained.]

§ 98. Care and binding out of state poor children.—Such superintendent of state and alien poor shall cause the state poor children, under sixteen years of age, unless committed with the mother as hereinbefore provided by this chapter, to be maintained and cared for at such orphan asylums in this state as he may deem proper; and the expenses thereof shall be paid by the state treasurer on the certificate of such superintendent and the warrant of the comptroller. Such superin-

tendent, in his discretion, may bind out a state poor orphan or indigent child which may be committed to any such state alms-house, or placed in any orphan asylum, if a male child under twenty-one years, if a female under the age of eighteen, to be clerks, apprentices or servants until such child, if a male, be twenty-one years old, or if a female, shall be eighteen years old, which binding shall be as effectual as if such child had bound himself with the consent of his parents or other legal guardian.

[L. 1873, ch. 661, § 10; R. S., 8th ed., p. 2144,
with the following changes:

The law now provides that a child under ten years of age committed to a state alms-house may be transferred by the secretary of the state board of charities to an orphan asylum. By proposed revised section children between the ages of three and sixteen are to be maintained at such orphan asylums as the secretary of the state board of charities may direct. This change is desirable for the sake of uniformity; § 56 contains a similar provision.

No child under two years of age shall be committed to any asylum unless committed with the mother as hereinbefore provided in this chapter. See § 56.

And also with the change indicated in the note to § 91 of this article.]

§ 99. Transfer to other states or countries.— When any person becomes an inmate of any such alms-house, and expresses a preference to be sent to any state or country where he may have a legal settlement, or friends willing to support him or to aid in supporting him, the superintendent of state and alien poor may cause his removal to such state or country, provided, in the judgment of the superintendent, the interest of the state and the welfare of such poor person will be thereby promoted.

[L. 1873, ch. 661, § 11; R. S., 8th ed., p. 2144,

with the change indicated in the note to § 91 of this article.]

§ 100. Powers of superintendent of state and alien poor.— The superintendent of state and alien poor shall possess and exercise

the like powers, and be subject to the like duties as to the state poor as superintendents of the poor exercise and are subject to in the care and support of county poor. In the absence or illness of the superintendent such powers and duties may be performed and discharged, by any person appointed by the state board of charities for such purpose.

[L. 1873, ch. 661, § 12 ; R. S., 8th ed., p. 2145,

with the change indicated by the note to § 91 of this article.]

The first part of the old section relating to the taking and filing an official oath is omitted for the reason that it is covered by § 10 of Public Officers Law.]

§ 101. Indian poor persons; removal to county alms-house.— Every Indian residing within this state or upon any of the Indian reservations of this state, who is a poor person within the meaning of this chapter, shall be maintained as provided in this article. Upon application being made by such Indian poor person to the superintendent of the poor of the county where such Indian resides, or to any other officer charged with the support and relief of the poor, and on satisfactory proof being made that such Indian is a poor person as defined in this chapter, such superintendent or other officer shall by warrant, cause such Indian to be conveyed to the alms-house of the county where such Indian resides, where he shall be maintained at state expense. Immediately upon the removal of such Indian who is a poor person to such alms-house, all testimony taken and all facts relating thereto, together with a verified statement of the expenses incurred in making such removal, shall be transmitted to the state board of charities. Such board shall examine all matters relating thereto, and if satisfied that such removal was proper, and that the expenses thereof were actually and necessarily incurred, shall audit and allow the amount of such expenses, which when so audited and allowed shall be paid by the state treasurer, on the warrant of the comptroller, to the person incurring the same.

If, however, it shall appear to the satisfaction of such superin-

tendent that the Indian poor person making application for relief is in such physical condition as to make it improper to remove him to the almshouse, the superintendent may, subject to such rules and regulations as may be prescribed by the state board of charities, provide for the care and support of such Indian poor person, without removing him to the alms-house, and the expenses incurred in such care and support shall be paid by the state treasurer on the warrant of the comptroller, upon the order and allowance thereof by the state board of charities as in cases of support of Indian poor persons in alms-houses.

[L. 1894, ch. 436, § 1,

with the following changes:

The words "is blind, lame, old, impotent or decrepit or in any other way disabled or enfeebled so that he cannot maintain himself, shall be deemed a pauper Indian," are omitted. This will make the definition of a poor person as defined by § 2 of this chapter apply to Indians.

The last paragraph of the above section is new.]

§ 102. Contracts for support of Indian poor persons. — The state board of charities, shall from time to time, on behalf of the state, contract with the proper officers of the county within which such Indians who are poor persons reside, on such terms and for such times as it may deem proper, for the reception and support in the alms-house of such counties of such Indians who are poor persons as may be committed thereto. Such board may establish rules and regulations for the discipline, treatment and care of such Indians and provide for their discharge. Every such contract shall be in writing and filed in the office of such board.

[L. 1894, ch. 436, § 2,

without change of substance.]

§ 103. Expenses for support of Indian poor persons. — The expenses for the support, treatment and care of all Indians who are poor persons and shall be sent to such county alms-house pursuant to this chapter, shall be paid quarterly on the first day of

January, April, July and October in each year, to the treasurer of the county wherein such Indians are supported, by the state treasurer, on the warrant of the comptroller, but no such expenses shall be paid until an account of the number of Indians thus supported, and the time that each shall have been respectively maintained shall have been rendered in due form and approved by the state board of charities.

[L. 1894, ch. 436, § 3,
without change of substance.]

§ 104. Duty of keepers; superintendent of state and alien poor to keep record. — The keeper or principal officer in charge of such alms-house shall enter the names of all Indians committed thereto, with such particulars in relation thereto as the state board of charities may prescribe. Immediately upon the admission of any such Indian, such keeper or principal officer shall transmit by mail the names of such Indians, with the particulars hereinbefore mentioned, to the superintendent of state and alien poor; and notice of the death, discharge or absconding of any such Indian shall in like manner be transmitted to such superintendent. Such superintendent shall cause the names of such Indians in such county alms-house to be entered in a book to be kept for that purpose in the office of such board, and he shall verify the correctness thereof by comparison with the books kept in the alms-house, by personal examination of such Indians or in such other manner as the board may direct; and he shall furnish the board in tabulated statements, annually on or before the second Tuesday in January, the number of Indians maintained in all such county alms-houses during the preceding year, the number discharged, bound out, removed from the state, and the number who died or left without permission during the year, with such other information as the board may require.

[L. 1894, ch. 436, § 4,
with the change indicated in the note to § 91 of this article.]

ARTICLE VII.

Duties of State Board of Charities; Powers of State Charities Aid Association.

Section 115. Duties of State Board of Charities relating to the poor.

116. Visitation and inspection of alms-houses.

117. Investigations by board or committee; orders thereon.

118. Alms-house construction and administration.

119. Duties of the attorney-general and district attorneys.

120. State, nonresident and alien poor.

121. Visits by the State Charities Aid Association.

§ 115. Duties of the State Board of Charities relating to the poor.—The State Board of Charities shall:

1. Investigate the condition of the poor seeking public aid and devise measures for their relief.

2. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

3. Advise the officers of alms-houses in the performance of their official duties.

4. Collect statistical information in respect to the property, receipts and expenditures of all alms-houses, and the number and condition of the inmates thereof.

[L. 1895, ch. 771, parts of §§ 1 and 2 re-enacted but not to be repealed by this chapter.]

§ 116. Visitation and inspection of alms-houses.— Any commissioner or officer of the State Board of Charities, or any inspector duly appointed by it for that purpose, may visit and inspect any alms-house in this state. On such visits inquiry shall be made to ascertain:

1. Whether the rules and regulations of the board, in respect to such alms-house, are fully complied with.

2. Its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates.

3. The condition of its finances generally.

4. The methods of government and discipline of its inmates.

5. The qualifications and general conduct of its officers and employes.

6. The condition of its grounds, buildings and other property.

7. Any other matter connected with, or pertinent to, its usefulness and good management.

Any commissioner or officer of the board, or inspector duly appointed by it, shall have free access to the grounds, buildings, books and papers relating to such alms-house, and may require from the officers and persons in charge, any information it may deem necessary. Such board may prepare regulations according to age, and provide blanks and forms upon which such information shall be furnished, in a clear uniform and prompt manner for the use of the board; any such officer or inspector who shall divulge or communicate to any person without the knowledge and consent of such board, any facts or information obtained in pursuance of the provisions of this chapter, shall be guilty of a misdemeanor, and shall at once be removed from office. The annual reports of each year shall give the results of such inquiry, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employe of any such alms-house who shall willfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, and who shall refuse or neglect to furnish the opinion required by the board, or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The rights and powers hereby conferred may be enforced by an order of the supreme court after such notice as the court may prescribe, and an opportunity to be heard thereon, or by indictment by the grand jury of the county, or both.

**[L. 1895, ch. 771, part of § 10,
without change of substance,
superseding L. 1867, ch. 951, §§ 4, 5, 7; R. S., 8th ed., pp.
2137-8,
L. 1873, ch. 571, §§ 4, 5, 6, 7; R. S., 8th ed., p. 2140,
but are not to be repealed by this chapter.]**

§ 117. Investigations by board or committee; orders thereon.
—The board may, by order, direct an investigation by a committee of one or more of its members, of the officers and managers of any alms-house, or of the conduct of its officers and employes; and the commissioner or commissioners so designated to make such investigation may issue compulsory process for the attendance of witnesses and the production of books and papers, administer oaths, examine persons under oath, and exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

If it shall appear, after such investigation, that the inmates of the alms-house are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care and supervision, or other condition necessary to their comfort and well being, such board may issue an order in the name of the people, and under its official seal, directed to the proper officer of such alms-house, requiring him to modify such treatment or apply such remedy, or both, as shall therein be specified. Before such order is issued it must be approved by a justice of the supreme court, after such notice as he may prescribe, and an opportunity to be heard thereon, and any person to whom such an order is directed who shall willfully refuse to obey the same shall, upon conviction, be deemed guilty of a misdemeanor.

**[L. 1895, ch. 771, §§ 12, 13,
consolidated without change of substance, so far as they
relate to alms-houses, but are not to be repealed by this
act.]**

§ 118. Alms-house construction and administration.— No alms-house shall be built or reconstructed, in whole or in part, except on plans and designs approved in writing by the state board of charities. It shall be the duty of such board to call the attention, in writing or otherwise, of the board of supervisors and the superintendent of the poor, or other proper officer, in any county, of any abuses, defects or evils, which, on inspection, it may find in the alms-house of such county, or in the administration thereof, and such county officer shall take proper action thereon, with a view to proper remedies, in accordance with the advice of such board.

[L. 1895, ch. 771, §§ 15 and 16,
consolidated without change of substance;
L. 1867, ch. 951, §§ 4 and 6; R. S., 8th ed., p. 2137,
superseded by L. 1895, ch. 771, but are not to be repealed
by this chapter.]

§ 119. Duties of the attorney-general and district attorneys.— If, in the opinion of the state board of charities, or any three members thereof, any matter in regard to the management or affairs of any such alms-house, or any inmate or person in any way connected therewith, require legal investigation or action of any kind, notice thereof may be given by the board, or any three members thereof, to the attorney-general, who shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the attorney-general and of every district attorney when so required to furnish such legal assistance, counsel or advice as the board may require in the discharge of its duties under this chapter.

[L. 1895, ch. 771, § 17,
without change of substance; superseding
L. 1873, ch. 571, § 5; R. S., 8th ed., p. 2140,
but are not to be repealed by this chapter.]

§ 120. State, nonresident and alien poor.—The state board of charities, and any of its members or officers, may, at any time, visit and inspect any alms-house to ascertain if any inmates are state charges, nonresidents, or alien poor; and it may cause to be removed to the state or country from which he came, any such nonresident or alien poor found in any such alms-house.

[Extract from L. 1880, ch. 549, § 1, mostly new.]

§ 121. Visit by the state charities aid association.—Any justice of the supreme court, on written application of the state charities aid association, through its president or other officer designated by its board of managers, may grant to such persons as may be named in such application, orders to enable such persons, or any of them, as visitors of such association, to visit, inspect and examine, in behalf of such association, any alms-house within the state. The person so appointed to visit, inspect and examine such alms-house or alms-houses, shall reside in the county or counties from which such alms-house or alms-houses receive their or some of their inmates, and such appointment shall be made by a justice of the supreme court of the judicial district in which such visitors reside. Each order shall specify the alms-house to be visited, inspected and examined, and the name of each person by whom such visitation, inspection and examination shall be made, and shall be in force for one year from the date on which it shall have been granted, unless sooner revoked.

All persons in charge of any such alms-house shall admit each person named in any such order into every part of such alms-house, and render to such person every possible facility to enable him to make in a thorough manner such visit, inspection and examination, which are hereby declared to be for a public purpose and to be made with a view to public benefit. Obedience to the orders herein authorized shall be enforced in the same manner as obedience is enforced to an order or mandate of a court of record.

Such association shall make an annual report to the state board

of charities upon matters relating to the alms-house subject to its visitation. Such reports shall be made on or before the first day of November for each preceding fiscal year.

[L. 1893, ch. 635, §§ 1, 2, 3,

only that part of the statutes is re-enacted here which relates to the visitation of alms-houses by the state charities aid association, and is not to be repealed by this chapter.]

ARTICLE VIII.

Miscellaneous Provisions.

Section 130. Superintendents and overseers may redeem on sheriff's sale.

131. Redemption, how made.

132. Moneys therefor, and how paid.

133. When warrant of seizure may be discharged.

134. Boards of supervisors may abolish or revive distinction between town and county poor.

135. Overseers, when to pay money to county treasurer.

136. Invested town money.

137. Report by supervisors.

138. Register of sex and age.

139. Care of poor persons not to be put up at auction.

140. Reports of certain other officers.

141. Alms-house commissioners to report.

142. Report of state board of charities.

§ 130. Superintendents and overseers may redeem on sheriff's sale.—County superintendents and overseers of the poor may redeem real property, which may have been seized by them pursuant to sections nine hundred and twenty-one to nine hundred and twenty-six of the code of criminal procedure, the same as judgment-creditors under sections fourteen hundred and thirty to fourteen hundred and seventy-eight of the code of civil procedure. No such redemption shall be made, unless at the time of such redemption the seizure of the property sought to be redeemed, shall have been confirmed by the county court of the county where the prem-

ises may be situated, nor unless such property shall, at the time of making such redemption, be held by the superintendents or overseers, under and by virtue of such seizure.

[L. 1862, ch. 473, §§ 1, 2; R. S., 8th ed., p. 2129, re-enacted with the following changes:

The exception as to the county of New York is omitted, being covered sufficiently by § 915 of the Code of Criminal Procedure. The provisions of the old sections referring to the Revised Statutes have been changed to corresponding sections of the Code of Criminal Procedure and to Code of Civil Procedure.]

§ 131. Redemption, how made.—To entitle such superintendents or overseers to acquire the title of the original purchaser, or to be substituted as purchaser from any other creditor, they shall present to and leave with such purchaser or creditor, or the officer who made the sale, the following evidence of their right:

1. A copy of the order of the county court, confirming the warrant and seizure of such property, duly verified by the clerk of the court.

2. An affidavit of one of the superintendents or overseers that such property is held by them under such warrant and seizure, and that the same have not been discharged, but are then in full force.

[L. 1862, ch. 473, § 3; R. S., 8th ed., p. 2129, re-enacted without change of substance.]

§ 132. Moneys therefor, and how paid.—The superintendents or overseers of the poor may, for the purpose of making such redemption, use any moneys in their hands belonging to the poor funds of their respective towns or counties, which moneys shall be replaced, together with the interest thereon, out of the first moneys which may be received by them from the rent or sale of the premises so redeemed.

[L. 1862, ch. 473, §§ 4, 5; R. S., 8th ed., p. 2129, re-enacted without change of substance.]

§ 133. When warrant of seizure may be discharged.—If such redemption shall be made, and the person against whom the warrant was issued and seizure made shall apply to have the warrant discharged, he shall, before such warrant and seizure are discharged, in addition to the security required to be given by section nine hundred and twenty-four of the code of criminal procedure, pay to such superintendents or overseers the sum paid by them to redeem such property, together with interest thereon, from the time of such redemption.

[L. 1862, ch. 473, § 6; R. S., 8th ed., p. 2129, re-enacted with the following changes: The provisions of the old section relating to R. S., are changed to the appropriate section of the Code of Criminal Procedure.]

§ 134. Boards of supervisors may abolish or revive distinction between town and county poor.—The board of supervisors of any county may, at an annual meeting or at a special meeting called for that purpose, by resolution, abolish or revive the distinction between town and county poor of such county, by a vote of two-thirds of all the members elected to such board, and until such abolition or revival, such county, or the towns therein, shall continue to maintain and support their poor as at the time when this chapter shall take effect. The clerk of the board shall, within thirty days after such determination, serve, or cause to be served, a copy of the resolution upon the clerk of each town, village or city within such county, and upon each of the superintendents and overseers of the poor therein. Upon filing such determination to abolish the distinction between town and county poor, duly certified by the clerk of the board, in the office of the county clerk, the poor of the county shall thereafter be maintained, and the expense thereof defrayed, by the county; and all costs and charges attending the examinations, conveyance, support and necessary expenses of poor persons therein, shall be a charge upon the county. Such charges and expenses shall be reported by the superintendent of the poor, to the board of

supervisors, and shall be assessed, levied and collected the same as other county charges.

[R. S., part I, ch. 20, tit. I, §§ 23, 24, 25; R. S., 8th ed., p. 2110, and

L. 1848, ch. 176; R. S., 8th ed., p. 2127, re-enacted with the following changes:

1. A two-thirds vote of the board of supervisors is required to abolish or revive the distinction between town and county poor. Present law only requires majority vote.

2. The time within which the clerk of the board of supervisors shall serve such resolution of the board upon the clerk of each town, village or city is made thirty days. This change is made so as to prescribe a time within which the clerk must act. Under the law as it now exists it simply provides for a service of the resolution without prescribing the time within which it is to be done.

3. A part of 1848, ch. 176 is included in § 72 of revision.

4. The last sentence of the above section is taken from § 23 of the R. S.]

§ 135. Overseers, when to pay money to county treasurer.— Within three months after notice shall have been served upon the overseers of the poor, that the distinction between town and county poor has been abolished, they shall pay over all moneys which shall remain in their hands as overseers for the use of their town, after discharging all demands against them, to the county treasurer, to be applied by him toward the future taxes of such town; and all moneys thereafter received by them, as such overseers, for the use of the poor of their town, shall be paid by them to the county treasurer within three months after receiving the same, and by him credited to the town whose overseers shall have paid the same. It shall be the duty of all officers or persons to pay to the county treasurer all moneys which shall be received for, or owing by them to the overseers of the poor of any such town, for the use of the poor thereof, pursuant to any law or obligation requiring the same to be paid to such overseers, and credited by

such county treasurer to the town for whose use such moneys were received or owing. Any overseer or other person having received or owing such moneys, who shall neglect or refuse to pay the same within thirty days after demand thereof, shall be liable to an action therefor, with interest at the rate of ten per cent thereon, by such county treasurer, in the name of his county.

【R. S., pt. I, ch. 20, tit. I, §§ 19, 20, 21 and 27,

R. S., 8th ed., pp. 2108-9,

consolidated with the following changes:

The time within which the overseers are to pay over moneys which shall remain in their hands to the county treasurer is extended from thirty days to three months, both in case of moneys in the hands of such overseers at the time of the abolishing the distinction between town and county poor, and also of all moneys thereafter collected by them.】

§ 136. Invested town money.—When any town shall have any moneys raised for the support of the poor, invested in the name of the overseers of the poor of such town, such overseers shall continue to have the control thereof, and shall apply the interest arising therefrom to the support of the poor of their town, so long as such town shall be liable to support its own poor, but when relieved from such liability by a vote of the supervisors of the county, the money so raised and invested shall be applied to the payment of such taxes upon the town, as the inhabitants thereof shall at an annual town meeting, or a special town meeting called for that purpose determine.

【R. S., pt. I, ch. 20, tit. I, § 74; R. S., 8th ed., p. 2120,

re-enacted without change of substance.】

§ 137. Report by supervisors.—The supervisor of every town in counties where all the poor are not a county charge, shall report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the town board at its first annual meeting in each year, an abstract of all such accounts, which shall exhibit the number of poor per-

sons that have been relieved or supported in such town the preceding year, specifying the number of county poor, and town poor, the whole expense of such support, the allowance made to overseers, justices, constables or other officers, which shall not comprise any part of the actual expenses of maintaining the poor.

[R. S., pt. I, ch. 20, tit. I, § 76; R. S., 8th ed., p. 2120, re-enacted without change of substance.]

§ 138. Register of sex and age.—In addition to the general register of the inmates of the various alms-houses, there shall be kept a record of the sex, age, birthplace, birth of parents, education, habits, occupation, condition of ancestors and family relations, and cause of dependence of each person at the time of admission, with such other facts and particulars in relation thereto as may be required by the state board of charities, upon forms prescribed and furnished by such board. Superintendents and overseers of the poor, and other officers charged with the relief and support of poor persons, shall furnish to the keepers or other officers in charge of such alms-houses, as full information as practicable in relation to each person sent or brought by them to such alms-house, and such keepers or other officers, shall record the information ascertained at the time of the admission of such person, on the forms so furnished. All such records shall be preserved in such alms-houses, and the keepers and other officers in charge thereof shall make copies of the same on the first day of each month, and immediately forward such copies to the state board of charities.

[L. 1875, ch. 140, §§ 1, 2; R. S., 8th ed., p. 2131, re-enacted without change of substance.]

§ 139. Care of poor persons not to be put up at auction.—No officer or persons whose duty it may be to provide for the maintenance, care or support of poor persons at public expense, shall put up at auction or sale, the keeping, care or maintenance of any such poor person to the lowest bidder, and every contract

which may be entered into in violation of this provision shall be void.

【L. 1848, ch. 176; R. S., 8th ed., p. 2127,

Last sentence of § 1 of the above act re-enacted without change of substance.】

§ 140. Reports of certain other officers.—The provisions of this chapter, relating to reports by superintendents of the poor, to the state board of charities, and the penalties applicable thereto, are hereby extended to, and made applicable to the commissioners of public charities for the city and county of New York, the superintendent of the alms-house of the county of Albany, the keeper of the alms-house of the county of Putnam, the commissioners of the alms-house elected in the cities of Newburgh and Poughkeepsie, and all poor officials elected or appointed in other cities of this state, under general or special acts of the legislature.

【L. 1870, ch. 424, §§ 1, 3; R. S., 8th ed., p. 2129,
re-enacted without substantial change.

The report is to be made to the state board of charities instead of to the secretary of state.】

§ 141. Alms-house commissioners to report.—The commissioners of the alms-house of the cities of Newburgh and Poughkeepsie, and the poor officers of other cities chosen under special acts of the legislature, shall annually, on the first day of December, report to the superintendent of the poor of their respective counties such statistics as, from time to time, may be required to be reported in the other cities and towns under the provisions of this chapter.

【L. 1870, ch. 424, § 2; R. S., 8th ed., p. 2130,
re-enacted without change of substance.】

§ 142. Report of state board of charities.—The state board of charities shall include in its annual report to the legislature the results of the information obtained from the reports to be made

to it as herein provided. It shall also, from time to time, furnish to the officials so required to report to it, necessary forms, blanks and instructions required in making up such reports.

[R. S., pt. I, ch. 20, tit. I, § 79; R. S., 8th ed., p. 2121, L. 1870, ch. 424, §§ 4, 5 and 6, with the following changes:

The state board of charities is substituted for secretary of state. This change is made necessary for the reason that superintendents of the poor are no longer required to report to the secretary of state, but to the state board of charities.]

ARTICLE IX.

Laws Repealed; When to Take Effect.

Section 150. Laws repealed.

151. When to take effect.

Section 150. Laws repealed.—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 151. When to take effect.—This chapter shall take effect on the first day of October, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

| | |
|--|--------------------|
| Revised Statutes, part I, ch. 20, tit. I..... | All. |
| Revised Statutes, part I, ch. 20, tit. VI..... | All. |
| Laws of— | Chapter. Sections. |
| 1828..... | 6..... All. |
| 1830..... | 320..... 8, 9. |
| 1831..... | 277..... All. |
| 1832..... | 26..... All. |
| 1834..... | 236..... All. |
| 1838..... | 202..... All. |
| 1842..... | 214..... All. |
| 1845..... | 334..... All. |
| 1846..... | 245..... All. |
| 1848..... | 176..... All. |

| Laws of— | Chapter. | Section. |
|-----------|----------|----------|
| 1849..... | 100..... | All. |
| 1851..... | 532..... | All. |
| 1853..... | 70..... | All. |
| 1854..... | 188..... | All. |
| 1855..... | 269..... | All. |
| 1862..... | 473..... | All. |
| 1870..... | 424..... | All. |
| 1872..... | 38..... | All. |
| 1872..... | 48..... | All. |
| 1873..... | 661..... | All. |
| 1874..... | 464..... | All. |
| 1875..... | 140..... | All. |
| 1875..... | 173..... | All. |
| 1875..... | 308..... | All. |
| 1876..... | 266..... | All. |
| 1878..... | 404..... | All. |
| 1879..... | 240..... | All. |
| 1881..... | 203..... | All. |
| 1881..... | 398..... | All. |
| 1881..... | 574..... | All. |
| 1883..... | 247..... | All. |
| 1884..... | 319..... | All. |
| 1885..... | 34..... | All. |
| 1885..... | 546..... | All. |
| 1887..... | 216..... | All. |
| 1887..... | 655..... | All. |
| 1887..... | 706..... | All. |
| 1888..... | 261..... | All. |
| 1888..... | 486..... | All. |
| 1890..... | 420..... | All. |
| 1892..... | 698..... | All. |
| 1893..... | 42..... | All. |
| 1894..... | 436..... | All. |
| 1894..... | 663..... | All. |
| 1895..... | 783..... | All. |

**TABLE SHOWING DISPOSITION OF LAWS REPEALED IN
REVISION OR ELSEWHERE.**

| Laws repealed. R. S., pt. I. ch. 90. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|----------------------------------|--------------------------------|--|
| Tit. I, § 14..... | 2106.. | ..... | Omitted as obsolete. |
| Tit. I, § 15..... | 2106.. | ..... | Omitted; see Co. L. 210. Oath, see Const., art. XIII, § 1. |
| Tit. I, § 16..... | 2107.. | 3..... | |
| Tit. I, § 17..... | 2108.. | ..... | Omitted; see Co. L., § 12. |
| Tit. I, § 18..... | 2108.. | ..... | Omitted. Temporary. |
| Tit. I, § 19..... | 2108.. | 14, 135. | |
| Tit. I, § 20..... | 2109.. | 14, 135. | |
| Tit. I, § 21..... | 2109.. | 135.... | |
| Tit. I, § 22..... | 2109.. | ..... | Omitted; see Town L., § 181. |
| Tit. I, § 23..... | 2109.. | ..... | Omitted. |
| Tit. I, § 24..... | 2110.. | 134.... | |
| Tit. I, § 25..... | 2110.. | 134.... | |
| Tit. I, § 26..... | 2110.. | ..... | Omitted; see Town L., § 181. |
| Tit. I, § 27..... | 2110.. | 135.... | |
| Tit. I, § 28..... | 2110.. | ..... | Omitted. |
| Tit. I, § 29..... | 2110.. | 40, 41.. | |
| Tit. I, § 30..... | 2111.. | 41..... | |
| Tit. I, § 31..... | 2111.. | 42..... | |
| Tit. I, § 32..... | 2111.. | 43..... | |
| Tit. I, § 33..... | 2112.. | 44..... | |
| Tit. I, § 34..... | 2112.. | 45..... | |
| Tit. I, § 35..... | 2112.. | 46..... | |
| Tit. I, § 36..... | 2112.. | 47..... | |
| Tit. I, § 37..... | 2113.. | 47..... | |
| Tit. I, § 38..... | 2113.. | 48..... | |
| Tit. I, § 39..... | 2113.. | 20..... | |
| Tit. I, § 40..... | 2113.. | 21..... | |
| Tit. I, § 41..... | 2114.. | 22..... | |

| Laws repealed. R. S., pt. I, ch. 20. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|--------------------------|------------------------|---|
| Tit. I, § 42..... | 2114.. | 23..... | |
| Tit. I, § 43..... | 2114.. | 24..... | |
| Tit. I, § 44..... | 2114.. | 24..... | |
| Tit. I, § 45..... | 2114.. | 24..... | |
| Tit. I, § 46..... | 2115.. | 5..... | |
| Tit. I, § 47..... | 2115.. | 8..... | |
| Tit. I, § 48..... | 2115.. | 9..... | |
| Tit. I, § 49..... | 2115.. | 10..... | |
| Tit. I, § 50..... | 2115.. | 11..... | |
| Tit. I, § 51..... | 2116.. | 26..... | |
| Tit. I, § 52..... | 2116.. | 26..... | |
| Tit. I, § 53..... | 2116.. | 14..... | |
| Tit. I, § 54..... | 2116.. | 27..... | |
| Tit. I, § 55..... | 2117.. | 27..... | |
| Tit. I, § 56..... | 2117.. | 29..... | And partly omitted. |
| Tit. I, § 57..... | 2117.. | 28..... | |
| Tit. I, § 58..... | 2117.. | 50..... | And Penal Code, § 675a. |
| Tit. I, § 59..... | 2117.. | 51..... | |
| Tit. I, § 60..... | 2118.. | 52..... | |
| Tit. I, § 61..... | 2118.. | 53..... | |
| Tit. I, § 62..... | 2118.. | 54..... | |
| Tit. I, § 63..... | 2118.. | 14..... | |
| Tit. I, § 64..... | 2119.. | ..... | Repealed by L. 1831, ch. 277. |
| Tit. I, § 65..... | 2119.. | 14..... | |
| Tit. I, § 66..... | 2119.. | ..... | Omitted. |
| Tit. I, § 67..... | 2119.. | 28..... | Omitted; covered by § 180 of Town Law. |
| Tit. I, § 68..... | 2119.. | ..... | Omitted; covered by § 180 of Town Law. |
| Tit. I, § 69..... | 2119.. | ..... | Omitted. |
| Tit. I, § 70..... | 2119.. | ..... | Omitted. |
| Tit. I, § 71..... | 2119.. | ..... | Omitted. |

| Laws repealed. R. S., pt. I, ch. 20. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|----------------------------------|--------------------------------|--|
| Tit. I, § 72..... | 2120.. | ..... | To be in Tax Law, Military Code and Code of Civ. Pro. |
| Tit. I, § 73..... | 2120.. | 6..... | |
| Tit. I, § 74..... | 2120.. | 136.... | |
| Tit. I, § 75..... | 2120.. | 12..... | |
| Tit. I, § 76..... | 2120.. | 89..... | |
| Tit. I, § 77..... | 2121.. | ..... | Omitted. |
| Tit. I, § 78..... | 2121.. | 14..... | |
| Tit. I, § 79..... | 2121.. | 142.... | |
| Tit. I, § 80..... | 2121.. | ..... | Omitted. |
| Tit. I, § 81..... | 2121.. | ..... | Omitted; see Town L. § 181. |
| Tit. I, § 82..... | 2121.. | ..... | Omitted; see Town L. § 181. |
| Tit. VI, § 3..... | 2211.. | 60..... | |
| Tit. VI, § 4..... | 2211.. | 61..... | |
| Tit. VI, § 53..... | 2211.. | 62..... | |
| Tit. VI, § 54..... | 2212.. | 63..... | |
| Tit. VI, § 55..... | 2212.. | 64..... | |
| Tit. VI, § 56..... | 2212.. | 65..... | |
| Tit. VI, § 57..... | 2212.. | 66..... | |
| Tit. VI, § 58..... | 2212.. | 67..... | |
| Tit. VI, § 59..... | 2212.. | 68..... | |
| Tit. VI, § 60..... | 2212.. | 69..... | |
| Tit. VI, § 61..... | 2213.. | 70..... | |
| Tit. VI, § 62..... | 2213.. | 71..... | |
| Tit. VI, § 63..... | 2213.. | 71..... | |
| Tit. VI, § 64..... | 2213.. | 71..... | |
| Tit. VI, § 65..... | 2213.. | 72..... | |
| Tit. VI, § 66..... | 2214.. | 73..... | |
| Tit. VI, § 67..... | 2214.. | ..... | See Penal Code, § 117b. |
| Tit. VI, § 68..... | 2214.. | 75..... | |
| Tit. VI, § 69..... | 2214.. | ..... | Omitted; obsolete. |

| Laws repealed. R. S., pt. I, ch. 20. | R. S. 8th. ed., pages. | Secs. of Revision. | Notes. |
|---|---------------------------|-----------------------|--|
| 1828, ch. 6..... | 2214.. | ..... | Superseded by Code Crim. Pro., § 840. |
| 1830, ch. 320..... | 2110.. | 40, 41.. | |
| 1831, ch. 277..... | 2122.. | 55, 56.. | |
| 1832, ch. 26..... | 2122.. | 3, 74... | |
| 1834, ch. 236..... | 2132.. | 20, 22.. | |
| 1838, ch. 202..... | 2215.. | 74..... | |
| 1842, ch. 214..... | 2123.. | 12, 14.. | |
| 1845, ch. 334..... | ..... | ..... |  |
| 1845, ch. 334, § 1..... | 2124.. | 20-24... | |
| 1845, ch. 334, § 2..... | 2124.. | 13, 21, 23 | |
| 1845, ch. 334, § 3..... | 2124.. | 26..... | |
| 1845, ch. 334, § 4..... | 2124.. | 26, 27.. | |
| 1845, ch. 334, § 5..... | 2125.. | 28..... | |
| 1845, ch. 334, § 6..... | 2125.. | 26..... | And partly omitted. |
| 1845, ch. 334, § 7..... | 2125.. | 27..... | |
| 1845, ch. 334, § 8..... | 2125.. | ..... | Omitted; see Co. L., § 12. |
| 1846, ch. 245..... | 2125.. | ..... | Omitted; temporary. |
| 1848, ch. 176..... | 2127.. | 134, 139 | |
| 1849, ch. 100..... | 2123.. | 12..... | |
| 1851, ch. 532..... | 2128.. | 3, sub. 4 | |
| 1853, ch. 70..... | 2177.. | 29..... | And partly omitted. |
| 1854, ch. 188..... | 2128.. | ..... | Superseded by Co. L., § 210. |
| 1855, ch. 269..... | 2128.. | ..... | Superseded by Town L., § 62. |
| 1862, ch. 473, §§ 1, 2.... | 2129.. | 130.... | |
| 1862, ch. 473, § 3..... | 2129.. | 131.... | |
| 1862, ch. 473, §§ 4, 5.... | 2129.. | 132.... | |
| 1862, ch. 473, § 6..... | 2129.. | 133.... | |
| 1870, ch. 424, § 1..... | 2129.. | 140.... | |
| 1870, ch. 424, § 2..... | 2129.. | 141.... | |
| 1870, ch. 424, § 3..... | 2129.. | 142.... | |
| 1870, ch. 424, §§ 4, 5, 6... | 2130.. | 142.... | |

| Laws repealed. R. S., pt. I, ch. 20. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|--------------------------|------------------------|--------------------------------|
| 1870, ch. 424, § 7..... | 2130.. | ..... | Omitted as temporary. |
| 1872, ch. 38..... | 2130.. | 49..... | |
| 1872, ch. 48..... | 2131.. | ..... | Omitted; see County L., § 211. |
| 1873, ch. 661, §§ 1, 2.... | 2142.. | 90..... | |
| 1873, ch. 661, § 3..... | 2143.. | 91..... | |
| 1873, ch. 661, § 4..... | 2143.. | 92..... | |
| 1873, ch. 661, § 5..... | 2143.. | 94..... | |
| 1873, ch. 661, § 6..... | 2143.. | 95..... | |
| 1873, ch. 661, §§ 7, 8.... | 2144.. | 96..... | |
| 1873, ch. 661, § 9..... | 2144.. | 97..... | |
| 1873, ch. 661, § 10..... | 2144.. | 98..... | |
| 1873, ch. 661, § 11..... | 2144.. | 99..... | |
| 1873, ch. 661, § 12..... | 2145.. | 100.... | |
| 1873, ch. 661, § 13..... | 2145.. | 93..... | |
| 1873, ch. 661, § 14..... | 2145.. | 2..... | |
| 1873, ch. 661, § 15..... | 2145.. | ..... | Omitted. |
| 1874, ch. 464..... | 2143.. | 90..... | |
| 1875, ch. 140..... | 2131.. | 138.... | |
| 1875, ch. 173..... | 2132.. | 56..... | |
| 1875, ch. 308..... | 2143.. | 92..... | |
| 1876, ch. 266..... | 2132.. | 56..... | |
| 1878, ch. 404..... | 2133.. | 56..... | |
| 1879, ch. 240..... | 2134.. | 56..... | |
| 1881, ch. 203..... | 2134.. | 83, 84.. | |
| 1881, ch. 398..... | 2135.. | 43..... | |
| 1881, ch. 574..... | 2135.. | 3, sub. 15 | |
| 1883, ch. 247..... | 2134.. | 83, 84.. | |
| 1884, ch. 319..... | 2135.. | 84..... | |
| 1885, ch. 34..... | 2134.. | 83..... | |
| 1885, ch. 546..... | 2118.. | 51, 52.. | |
| 1887, ch. 216..... | 2135.. | 84..... | |
| 1887, ch. 655..... | 2135.. | 13, 26.. | |

| Laws repealed. R. S., pt. I, ch. 20. | R S. 8th ed., pages. | Secs. of Revisions. | Notes |
|---|-------------------------|----------------------------|-------|
| 1887, ch. 706, §§ 1, 2. . . . | 2136.. | 80. | |
| 1887, ch. 706, § 3. | 2136.. | 81. | |
| 1887, ch. 706, § 4. | 2136.. | 81. | |
| 1887, ch. 706, § 5. | 2137.. | 80,81,82 | |
| 1888, ch. 261. | 2136.. | 80,81,84 | |
| 1888, ch. 486. | 2117.. | 52. | |
| 1890, ch. 420. | 3454.. | 26. | |
| 1892, ch. 698. | 3640.. | 4. | |
| 1893, ch. 42. | | 4. | |
| 1893, ch. 635. | | 122. . . . | |
| 1894, ch. 436. | | 96, 102 103, 104 105 | |
| 1894, ch. 663. | | 23. | |
| 1895, ch. 783. | | 84. | |

THE INSANITY LAW.

THE INSANITY LAW.

[This bill became chap. 545 of the Laws of 1896.]

REVISERS' NOTE EXPLANATORY OF THE INSANITY LAW.

This chapter of the revision prescribes the powers of the State Commission in Lunacy; the organization, management and control of State hospitals for the insane; the commitment, care and treatment of the insane; the management of the State hospitals for insane criminals; and the transfer of such criminals thereto and their discharge therefrom.

The last general revision of the laws relating to the custody, care and treatment of the insane was contained in chapter 446 of the Laws of 1874. This act provided for the commitment of the insane to State asylums and their support therein at the expense of relatives or the municipality from which they were committed. The laws relating to the management of the Utica State Asylum were incorporated in article 3 of this act. Other articles provided respectively for the management of the Willard Asylum, the Hudson River State Hospital, the Buffalo State Asylum and the State Homeopathic Asylum for the Insane at Middletown, and many of the provisions of the article regulating the control of the Utica State Asylum were made applicable to such institutions. Since the passage of that act, the Binghamton asylum has been established by chapter 280 of the Laws of 1879; St. Lawrence State Asylum, by chapter 375 of the Laws of 1887; Rochester State Hospital, by chapter 338 of the Laws of 1891; Collins Farm State Hospital, by chapter 777 of the Laws of 1894; Long Island State Hospital, by chapter 628 of the Laws of 1895.

All these acts are similar. The number of the managers and their terms of office vary in the several State hospitals, but such managers and the superintendents and other officers possess like powers. In article 3 of the revision, we have inserted a section making the number of managers uniform for all the State hospitals, with a uniform term of office. In such article we have also included general provisions relating to all State hospitals and to the powers and duties of the managers and officers, their salaries, the purchase of supplies, and all other matters pertaining to the control of these institutions.

Very many of the requirements contained in the general act of 1874 supplementary thereto, are obsolete, because of more recent legislation. By chapter 132 of the Laws of 1890, the names of the several State asylums were changed to State hospitals. By chapter 126 of the Laws of 1890, all indigent insane persons are to be supported by the State in the several State hospitals. This act, known as the "State Care Act," revolutionized the method of caring for the insane. Prior thereto the counties were chargeable with the cost of the maintenance of such insane persons as became public charges. They were confined in the several country almshouses, or in the State asylums, if the condition of the insane person warranted his treatment therein.

The present State Commission in Lunacy was created by chapter 283 of the Laws of 1889, which act was amended as a whole by chapter 273 of the Laws of 1890.

The commission superseded the commissioner appointed by the act of 1874. The assumption by the State of the care of insane persons made it necessary to greatly extend the powers of the commissions. They became a supervising body, vested with the power to direct the method of caring for and treating all insane persons.

In view of the great amount of money annually expended by the State for the support of the insane, the Legislature, by chapter 214 of the Laws of 1893, provided a system for the careful supervision of expenditures by the Commission in Lunacy and the Comptroller. The superintendents of the several State hospitals are thereby required to make monthly itemized estimates

to the commission, of the amount of money required for the purchase of supplies and payment of salaries, wages, etc., for the ensuing month, which are revised by the commission, and warrants are drawn by the Comptroller upon the State Treasurer in accordance with such revised estimates. All the essentials of this system are re-enacted in this revision.

Additional powers have been imposed upon the State Commission in Lunacy, many of them contained in laws making appropriations for the support of the State hospitals, notably chapter 358 of the Laws of 1894, page 719, and chapter 693 of the Laws of 1895. The general provisions contained in these acts applicable to the subject-matter of this chapter of the revision have been inserted in the proper places.

The acts of 1890, and the acts passed since that time, do not specifically repeal any part of the consolidated law of 1874, but all inconsistent provisions are doubtless superseded. It is difficult to determine the precise effect of the later development of the law upon the former legislation. The changes wrought by the later acts justify a complete revision of the laws relating to the care and treatment of the insane.

In this chapter we have endeavored to preserve the law as it is; striking out all inconsistent provisions, and all matter which the recently adopted system of caring for the insane has made nugatory. Changes have been made, which are noted with reasons therefor, at the end of the sections thereby affected.

The following are the material changes made in the revision:

1. State hospital districts are to be established by the Commission in Lunacy, instead of by the commissioners, State Board of Charities and Comptroller. (See note to § 10.)

2. The number of managers of the State hospitals and their terms of office are made uniform. (See note to § 31.)

3. The requirement of a "commissioner's visiting book" to be kept by the authorities of the several institutions, is omitted. (See note to § 47.)

4. No person is to be committed to an institution for the care and treatment of the insane, except upon an order of a judge of a court of record. Such order is to be granted upon a verified petition, and a certificate of lunacy, signed by two medical examiners, after notice to the alleged insane person, or some person in his behalf, to be designated by the court. A hearing may be had by the judge to whom the application is made, in his discretion, or upon the demand of some relative or friend of the alleged insane person. (See §§ 60-63 and notes thereto.)

5. It is proposed that no insane person shall be confined in a prison, jail or lockup, unless he is dangerous and no other suitable place for his confinement can be had. (See note to § 69.)

6. A change is made in the method of transfer of an insane criminal from penal institutions to the State hospital for insane criminals. By the present law the transfer is made upon the certificate of the physician of the institution. It is proposed that the question of insanity be determined by legally qualified medical examiners in a manner similar to that required in the commitment of insane persons to State hospitals. (See note to § 97.)

The table at the end hereof shows the disposition of the sections of the present laws which are to be repealed by this chapter.

THE INSANITY LAW.

AN ACT in relation to the insane, constituting chapter twenty-eight of the general laws.

Became a law May 12, 1896, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XXVIII OF THE GENERAL LAWS.

The Insanity Law.

Article 1. State commission in lunacy (§§ 1-16).

- 2. Institutions for the care, treatment and custody of the insane (§§ 30-49).**
- 3. Commitment, care and discharge of the insane (§§ 60-77).**
- 4. Matteawan state hospital for insane criminals (§§ 90-103).**
- 5. Laws repealed, when to take effect (§§ 110-111).**

ARTICLE I.

State Commission in Lunacy.

Section 1. Short title.

- 2. Definitions.**
- 3. Appointment, qualifications, terms of office and salaries of commissioners.**
- 4. Office and clerical force of commission.**
- 5. Official seal and execution of papers.**
- 6. General powers.**
- 7. Official visits.**
- 8. Regulations and forms.**

Section 9. Annual report.

10. State hospital districts; how defined.
11. Change of hospital districts and reassignment of patients.
12. Record of medical examiners.
13. Record of patients.
14. Institutions to furnish information to commission.
15. Commission to provide for the prospective wants of the insane.
16. Director of the pathological institute.

Section 1. Short title.— This chapter shall be known as the insanity law.

§ 2. Definitions.— When used in this chapter, the term **poor person** means a person who is unable to maintain himself and having no one legally liable and able to maintain him; the term, an **indigent person**, means one who has not sufficient property to support himself while insane, and the members of his family lawfully dependent upon him for support; the term **institution** means any hospital, asylum, building, buildings, house or retreat, authorized by law to have the care, treatment or custody of the insane; the term **commission** means the state commission in lunacy; the term **patient** means an insane person committed to an institution according to the provisions of this chapter.

[New.]

§ 3. Appointment, qualifications, terms of office and salaries of commissioners.— There shall continue to be a state commission in lunacy, consisting of three commissioners, all of whom shall be citizens of this state. One of them, who shall be president of the commission, shall be a reputable physician, a graduate of an incorporated medical college, of at least ten years' experience in the actual practice of his profession, who has had five years' actual experience in the care and treatment of the insane and who has had experience in the management of institutions for the insane. He shall receive an annual salary of five thousand dol-

lars. One of such commissioners shall be a reputable attorney and counsellor-at-law of the courts of this state of not less than ten years' standing, who shall receive an annual salary of three thousand dollars. The third commissioner shall be a reputable citizen, and shall receive ten dollars per day for actual services rendered as a member of the commission. Such salaries may be fixed by the governor, secretary of state and comptroller, at different amounts than those prescribed in this section, whenever in their discretion such amounts should be changed. Each commissioner shall receive annually twelve hundred dollars, payable monthly, in lieu of his traveling and incidental expenses. The full term of office of a commissioner shall be six years. Where the term of office of a commissioner expires at a time other than the last day of December, the term of office of his successor is abridged so as to expire on the last day of December, preceding the time when such term would otherwise expire, and the term of office of each commissioner thereafter appointed shall begin on the first day of January. The commissioners shall be appointed by the governor, by and with the advice and consent of the senate.

[L. 1889, ch. 283, §§ 1-5, as amended by

L. 1890, ch. 273,

There have been omitted from § 1 the temporary provisions relating to the creation of the first commission.

The matter relating to the filling of vacancies, and the taking and filing of oaths of office is omitted since it is amply covered by Pub. Off. L., §§ 10 and 28. The sentence providing that the salaries of the commissioners may be fixed by the governor, secretary of state and comptroller was not included in the bill as originally submitted to the legislature by this commission. It was inserted in the committee of the assembly.]

§ 4. Office and clerical force of commission. — The commission shall be provided by the proper authorities with a suitably furnished office in the state capitol, where it shall hold stated meetings at least once in three months. It may hold other

meetings, at such office or elsewhere, as it may deem necessary. It may employ a secretary, a stenographer and such other employes as may be necessary. The salaries and reasonable expenses of the commission and of the necessary clerical assistants shall be paid by the treasurer of the state on the warrant of the comptroller, out of any moneys appropriated for the support of the insane.

[L. 1889, ch. 283, § 6, as amended by
L. 1890, ch. 273,
without material change.

The limit to be appropriated for salaries is omitted. Since the passage of the act creating the commission, their powers and duties have been increased and consequently the legislature has disregarded the limit by this section. The part relating to the power of the secretary to attest papers is re-enacted in the next section.]

§ 5. Official seal and execution of papers.—The commission shall have an official seal. Every process, order or other paper issued or executed by the commission, may, by the direction of the commission, be attested, under its seal, by its secretary or by any member of the commission, and when so attested shall be deemed to be duly executed by the commission.

[L. 1889, ch. 283, §§ 6 and 14, as amended by
L. 1890, ch. 273.

The commission, by § 843 of the code of civil procedure, has the power to administer oaths in all matters which they are required to investigate. By § 933 of the code copies of all papers filed in a public office, having an official seal, may be introduced as evidence upon a proper certification by the officer having charge of such papers. It is then only necessary to re-enact the part of this section relating to the official seal.]

§ 6. General powers.—The commission is charged with the execution of the laws relating to the custody, care and treatment of the insane, as provided in this act, not including

feeble-minded persons and epileptics as such and idiots. They shall examine all institutions, public and private, authorized by law to receive and care for the insane, and inquire into their methods of government and the management of all such persons therein. They shall examine into the condition of all buildings, grounds and other property connected with any such institution, and into all matters relating to its management. For such purpose each commissioner shall have free access to the grounds, buildings and all books and papers relating to any such institution. All persons connected with any such institution shall give such information, and afford such facilities for any such examination or inquiry as the commissioners may require. The commission may, by order, appoint a competent person to examine the books, papers and accounts, and also into the general condition and management of any institution to the extent deemed necessary and specified in the order.

[L. 1889, ch. 283, § 10, as amended by
L. 1890, ch. 273,

without change in substance. The last sentence is new.

By § 11 of article 8 of the constitution, the state commission in lunacy is made a constitutional body and the power conferred upon them to visit and inspect institutions for the insane, not including institutions for epileptics and idiots.]

§ 7. Official visits.—The commission, or a majority thereof, shall visit every such institution at least twice in each calendar year. Such visits shall be made jointly or by a majority of the commission on such days and at such hours of the day or night, and for such length of time, as the visiting commissioners may choose. But each commissioner may make such other visits as he or the commission may deem necessary. Each visit shall include, to the fullest extent deemed necessary, an inspection of every part of each institution, and all the out-houses, places, buildings and grounds belonging thereto or used in connection therewith. The commissioners shall, from time to time,

make an examination of all the records and methods of administration, the general and special dietary, the stores and methods of supply, and, as far as circumstances may permit, of every patient confined therein, especially those admitted since the preceding visit, giving such as may require it suitable opportunity to converse with the commissioners apart from the officers and attendants. They shall, as far as they deem necessary, examine the officers, attendants and other employes, and make such inquiries as will determine their fitness for their respective duties. At the next regular or special meeting of the commission, after any such visit, the visiting commissioners shall report the result thereof, with such recommendations for the better management or improvement of any such institution, as they may deem necessary. But such recommendations shall not be contrary to the doctrines of the particular school of medicine adopted by such institutions. The commissioners shall, from time to time, meet the managers or responsible authorities of such institutions, or as many of the number as practicable, in conference, and consider, in detail, all questions of management and improvement of the institution, and shall also send to them, in writing, if approved by a majority of the commissioners, such recommendation in regard to the management and improvement of the institution as they may deem necessary or desirable.

[L. 1889, ch. 283, § 11, as amended by

L. 1890, ch. 273,

without change in substance.

The part relating to recommendations is new. It is not required here as in the old law to enter at length the result of the inspection in the "commissioners' visiting book." This has been proved by experience to be of no practical value.]

§ 8. Regulations and forms.—The commission shall make such regulations in regard to the correspondence of the insane in custody as in its judgment will promote their interests, and it shall be the duty of the proper authorities of each institution to comply with and enforce such rules and regulations. All such insane

shall be allowed to correspond without restriction with the county judge and district attorney of the county from which they were committed. The books of record and blank forms for the official use of the hospitals shall be uniform, and shall be approved by the commission.

[L. 1889, ch. 283, § 19, as amended by

L. 1890, ch. 273,

without change in substance.

L. 1895, ch. 693.

The last two sentences are new in the statute, although the commission in lunacy have formerly made similar requirements by means of rules and regulations.]

§ 9. Annual report.—The commission shall, annually, report to the legislature its acts and proceedings for the year ending September thirtieth last preceding, with such facts in regard to the management of the institutions for the insane as it may deem necessary for the information of the legislature, including estimates of the amounts required for the use of the state hospitals and the reasons therefor; and also the annual reports made to the commission by the board of managers of each state hospital and by the State Charities Aid association.

[L. 1889, ch. 283, § 18, as amended by

L. 1890, ch. 273,

without change in substance.

The part relating to the including of the annual reports of the boards of managers and of the State Charities Aid Association is new. The report formerly required did not contain estimates of amounts required for the use of state hospitals. This change is made because of the estimate system adopted in 1893.]

§ 10. State hospital districts; how defined.—The state commission in lunacy shall divide the state into as many state hospital districts as there are state hospitals. No county shall be divided in such classification, unless more than one of the existing state hospitals be situated within such county. Whenever the com-

mission shall deem it necessary to more conveniently care for the insane in the various hospitals, it may change the limits of such hospital districts. When a new state hospital shall be established, they shall again divide the state into hospital districts. Before any such change or re-establishment of hospital districts shall be made, the board of managers of each such hospital shall be notified by the commission that they may be heard in regard thereto at a specified time and place. Such hospital districts shall be so defined that the number of patients in each district shall be in proportion, as nearly as practicable, to the accommodations which are or may be provided by the state hospital or hospitals within such district.

[L. 1890, ch. 126, § 1.

This act created a board for the establishment of state insane asylum districts and gave them the power to divide the state into districts. Such board consisted of the president of the state board of charities, the comptroller of the state and the commissioners in lunacy. Since the passage of that act, the power of the state board of charities has been materially changed, and their supervision over state hospitals has been placed with the commission in lunacy. We have, therefore, provided by the revision that the commission in lunacy be given the power formerly vested in such state board of charities. We have omitted the temporary provision contained in § 1, and only preserved such part as is now in force.]

§ 11. Change of hospital districts and reassignment of patients.—When a change or re-establishment of state hospital districts shall be made, or a new state hospital district created, the commission shall make a report thereof, designating the counties included within each district affected thereby, and file the same with the secretary of state, and send a copy to the managers and superintendent of each state hospital, and to each judge of a court of record, each county superintendent of the poor, and each county clerk in the state, to be filed in his office.

[L. 1890, ch. 126, § 2,

with such changes as were necessary in striking out the temporary matter.]

§ 12. Record of medical examiners.—Any physician who receives a certificate as a medical examiner in lunacy shall file such original certificate in the office of the clerk of the county where he resides, and forward a certified copy thereof to the office of the commission within ten days after such certificate is granted. The commission shall keep in its office a record showing the name, residence and certificate of each duly qualified medical examiner, and shall immediately file in its office, when received, each duly certified copy of a medical examiner's certificate, and advise the examiner of its receipt and filing. No examiner shall be qualified until he has received from the commission an acknowledgment of the receipt and filing of his certificate.

[This section is a part of L. 1889, ch. 283, § 7, as amended by L. 1890, ch. 273.]

§ 13. Record of patients.—The commission shall keep in its office, and accessible only to the commissioners, their secretary and clerk, except by the consent of the commission or one of its members, or an order of a judge of a court of record, a record showing:

1. The name, residence, sex, age, nativity, occupation, civil condition and date of commitment of every patient in custody in the several institutions for the care and treatment of insane persons in the state, and the name and residence of the person making the petition for commitment, and of the persons signing such medical certificate, and of the judge making the order of commitment.

2. The name of the institution where each patient is confined, the date of admission, and whether brought from home or another institution, and if from another institution, the name of such institution, by whom brought, and the patient's condition.

3. The date of the discharge of each patient from such institu-

tion since the fifteenth day of May, eighteen hundred and eighty-nine, and whether recovered, improved or unimproved, and to whose care committed.

4. If transferred, for what cause, and to what institution; and if dead, the date and cause of death.

[L. 1889, ch. 283, § 8, as amended by
L. 1890, ch. 273,
without change in substance.]

§ 14. Institutions to furnish information to commission.—The authorities of the several institutions for the insane shall furnish to the commission the facts mentioned in the last preceding section, and such other obtainable facts relating thereto as the commission may, from time to time, in the just and reasonable discharge of its duties, require of them, with the opinion of the superintendent thereon, if requested. The superintendent or person in charge of such institutions, whether public or private, must, within ten days after the admission of an insane person thereto, cause a true copy of the medical certificate and order on which such person shall have been received, to be made and forwarded to the office of the commission; and when a patient shall be discharged, transferred or shall die therein, such superintendent or person in charge shall, within three days thereafter, send the information to the office of the commission, in accordance with the forms prescribed by it.

[L. 1889, ch. 283, § 9, as amended by
L. 1890, ch. 273,
without material change in substance.]

§ 15. Commission to provide for the prospective wants of the insane.—The commission shall provide sufficient accommodations for the prospective wants of the poor and indigent insane of the state. To prevent overcrowding in the state hospitals, it shall recommend to the legislature the establishment of other state hospitals, in such parts of the state as in their judgment will best meet the requirements of such insane. It shall

also furnish to the legislature in each year, an estimate of the probable number of patients who will become inmates of the respective state hospitals during the year beginning October first next ensuing, and the cost of all the additional buildings and equipments, if any, which will be required to carry out the provisions of this chapter relating to the care, custody and treatment of the poor and indigent insane of the state. No money shall be expended by the managers of a state hospital for the erection of additional buildings, or for unusual repairs or improvements of state hospitals, except upon plans and specifications to be approved by the commission. The cost of such buildings as are to be occupied by patients erected on the grounds of existing state hospitals, including the necessary equipment for heating, lighting, ventilating, fixtures and furniture, shall, in no case exceed the proportion of five hundred and fifty dollars per capita for the patients to be accommodated therein. No municipality of the state shall have the power to modify or change plans or specifications for the erection, repair or improvement of state hospital buildings or the plumbing or sewerage connected therewith.

[L. 1890, ch. 126, §§ 10-12, without change, except in form and phraseology. The sentence relating to the approval of plans by the commission is taken from L. 1894, ch. 358, p. 719, par. 1. The provision relating to the cost of buildings is new, as is also the last sentence.]

§ 16. Director of the pathological institute.—The commission shall, after a special civil service examination therefor, appoint a director of the pathological institute, who shall perform, under the direction of the commission, such duties relating to pathological research as may be required for all of the state hospitals for the insane. His office and laboratory shall be in the city of New York. He shall receive an annual salary to be fixed by the commission, subject to the approval of the governor.

[New, but see L. 1895, ch. 693, and L. 1874, ch. 446, tit. III, § 4; R. S., 8th ed., p. 2163.]

ARTICLE II.

Institutions for the Care, Treatment and Custody of the Insane.

Section 30. State hospitals for the poor and indigent insane.

31. Managers of state hospitals and their terms of office.

32. Appointment and removal of managers.

33. General powers and duties of boards of managers.

34. Appointments of resident officers by managers.

35. General powers and duties of superintendent.

36. The general and medical superintendents of the Long Island and Manhattan State hospital.

37. Monthly meetings of superintendents.

38. Salaries of officers and wages of employes.

39. Monthly estimates of expenses; contingent fund.

40. Powers and duties of treasurer.

41. Monthly statement of receipts and expenditures; vouchers.

42. Actions to recover moneys due the hospital.

43. General powers and duties of the steward.

44. Purchases.

45. Official oath.

46. Actions against commissioners in lunacy, or officers or employes of state hospitals.

47. Private institutions for the insane.

48. Recommendations of commission.

49. Visitors to state hospitals.

§ 30. State hospitals for the poor and indigent insane.—There shall continue to be the following hospitals for the care and treatment of the poor and indigent insane of the state which are hereby declared to be corporations; but other insane persons, who are residents of the state, may be admitted when there is room therein for them:

1. Utica State hospital, at the city of Utica, in the county of Oneida.

2. Willard State hospital, in the town of Ovid, county of Seneca.

3. Hudson River State hospital, near the city of Poughkeepsie, in the county of Dutchess.

4. Buffalo State hospital, in the city of Buffalo, county of Erie.

5. Middletown State Homeopathic hospital, at Middletown, in the county of Orange.

6. Binghamton State hospital, at Binghamton, in the county of Broome.

7. Rochester State hospital, at the city of Rochester, in the county of Monroe.

8. Saint Lawrence State hospital, near the city of Ogdensburg, in the county of Saint Lawrence.

9. Collins State Homeopathic hospital for the insane, in the town of Collins, county of Erie.

10. Long Island State hospital, at Kings Park, Suffolk county, Long Island.

11. Manhattan State hospital, in New York city and at Central Islip, Suffolk county.

[L. 1890, ch. 132, §§ 1-7; L. 1891, ch. 335, § 1; L. 1894, ch. 707, § 1; L. 1895, ch. 628, § 1; L. 1896, ch. 2, § 1.

The act of 1890 changed the names of the insane asylums then existing; the act of 1894 established the Collins State Homeopathic hospital; that of 1895, the Long Island State hospital, and that of 1896, the Manhattan State hospital.]

§ 31. Managers of state hospitals and their terms of office.— Each state hospital shall be under the control and management of its present board of managers or trustees, subject to the statutory powers of the commission, and to the provisions of this section as to the modification of their terms of office and the number of such trustees. Such trustees or managers shall hereafter be termed managers. On or before the thirty-first of December, after this chapter takes effect, and at which time the terms of the managers then in office shall expire, the governor shall appoint a board consisting of seven members for each state hospital by so arranging terms of one, two, three, four, five, six and seven years, that a term shall expire on the thirty-first day of December in each year, beginning with the year eighteen hundred and ninety-seven.

If a vacancy occur otherwise than by expiration of term, the appointment of a manager to fill such vacancy shall be for the unexpired term of the manager whose office became vacant; but the provisions of this section shall not apply to the Middletown State Homeopathic hospital at Middletown. in the county of Orange, where the number of managers shall be thirteen.

[This section is new. By the statutes now in force, the number of managers and their terms of office varies in the different hospitals. Utica hospital is controlled by nine managers, appointed for three years (L. 1874, ch. 446, tit. III, § 1); Willard hospital by eight trustees for eight years (L. 1874, ch. 446, tit. IV, § 1); Hudson River State hospital by nine managers for six years (L. 1874, ch. 446, tit. V, § 1); Buffalo State hospital by ten managers for six years (L. 1874, ch. 446, tit. VI, §§ 1, 2); Middletown State hospital by thirteen managers for six years (L. 1875, ch. 634, p. 808); Binghamton State hospital by eleven managers for six years (L. 1879, ch. 3280, § 1; L. 1880, ch. 61, § 1); St. Lawrence State hospital, ten managers for six years (L. 1887, ch. 575, § 1); Rochester State hospital, nine managers for nine years (L. 1891, ch. 338, § 2); Long Island State hospital, seven managers for seven years (L. 1895, ch. 628, § 4); Collins Farm State hospital, three managers for six years (L. 1894, ch. 707).

This section, as submitted to the legislature by the commission in their draft of this law, was as follows:

§ 31. Managers of state hospitals and their terms of office.— Each state hospital shall be under the control and management of its present board of managers or trustees, subject to the powers of the commission, and to the provisions of this section as to the modification of their terms of office and the number of such trustees. Such trustees or managers shall hereafter be termed managers. On or before the first Tuesday in January after this chapter takes effect, the governor shall modify the terms of office of the managers of each state hospital then in office, so that the term of office of one manager shall expire on the thirty-first day of December of such year, and of each year thereafter. If in any such state hospital the number of managers be more than seven

no manager shall be appointed therefor, until such number be reduced by expiration of term to less than seven. Thereafter the number of managers shall be seven, and the term of office of the manager appointed to fill the vacancy caused by such expiration of term shall be seven years. If a vacancy occur otherwise than by expiration of term, the appointment of a manager to fill such vacancy shall be for the unexpired term of the manager whose office became vacant. If, in any state hospital, there are less than seven managers in office when this chapter takes effect, the governor shall appoint managers to make up the number of seven, and on or before the first Tuesday in January, after this chapter takes effect, he shall classify the managers of such hospital, so that the term of one manager shall expire on the thirty-first day of December of that year, and each year thereafter.】

§ 32. Appointment and removal of managers.—The managers and their successors appointed after the appointment and classification made pursuant to the preceding section, shall severally be appointed by the governor, by and with the advice and consent of the senate, as often as a vacancy shall occur by expiration of term, or otherwise; and they may severally continue in office until their successors are appointed and have qualified; and they shall be subject to removal by the governor upon cause shown and an opportunity to be heard. All managers hereafter appointed shall reside in the hospital district in which the hospital is situated for which they are respectively appointed, but no person shall be eligible to the office of manager who is either an elective state officer or a member of the legislature, and if any such manager shall become a member of the legislature or such elective state officer, his office as manager shall be vacant. All the managers of the Middletown State Homeopathic hospital and of the Collins State Homeopathic hospital may be appointed from any portion of the state and shall be adherents of homeopathy. If any manager fails for one year to attend the regular meetings of the board of which he is a member, his office shall be vacant, and the board by resolution shall so

declare, and a certified copy of every such resolution shall forthwith be transmitted by the board to the governor.

[L. 1874, ch. 446, tit. III, § 1; tit. IV, § 1; tit. V, § 1; tit. VI, §§ 1, 2; tit. VII, § 1; R. S., 8th ed., pp. 2162-2172,
L. 1876, ch. 121, R. S., 8th ed., p. 2177,
L. 1879, ch. 280, § 1, as amended by
L. 1889, ch. 427; R. S., 8th ed., p. 2178,
L. 1887, ch. 375, § 1; R. S., 8th ed., p. 2189,
L. 1895, ch. 628, § 4.]

The provisions of these acts relating to the appointment and removal of managers are here re-enacted and made uniformly applicable to all the state hospitals. There is no material change made as the same provisions are somewhere contained in the acts establishing the several hospitals.]

§ 33. General powers and duties of boards of managers.— Subject to the statutory powers of the commission, each board of managers shall have the general direction and control of all the property and concerns of the institution over which they are respectively appointed, not otherwise provided by law. They may acquire and hold in the name of and for the people of the state of New York by grant, gift, devise or bequest, property to be applied to the maintenance of insane persons in and for the general use of the hospital. All lands necessary for the use of state hospitals shall be acquired by condemnation as lands for public use are acquired, except those by gift, devise or purchase, the terms of which purchase shall be approved by the commission and the state comptroller. No public street or road for railroad or other purposes shall be opened through the lands of a state hospital, unless the legislature, by special act, consents thereto. The managers shall not receive any compensation for their services, but shall receive actual and necessary traveling and other expenses, to be paid after audit as other current expenditures of the hospital. Each board shall:

1. Take care of the general interests of the hospital and see that its design is carried into effect, according to law, and its by-laws, rules and regulations.

2. Establish such by-laws, rules and regulations as they may deem necessary and expedient for regulating the appointment and duties of officers and employes of the hospital, and for the internal government, discipline and management of the same.

3. Maintain an effective inspection of the hospital, for which purpose a majority of the board shall visit the hospital at least every three months, and the whole board once a year, and at such other times as may be prescribed in the by-laws.

4. Keep in a book provided for that purpose, a fair and full record of their doings, which shall be open at all times to the inspection of the governor of the state, the commissioners in lunacy, or any person appointed by the governor, the commission in lunacy, or either house of the legislature to examine the same.

5. Cause to be typewritten within ten days after each meeting of such managers, or a committee thereof, the minutes and proceedings of such meeting, and cause a copy thereof to be sent forthwith to each member of such board and to the commission.

6. Enter in a book kept by them for that purpose, the date of each of their visits, and the condition of the hospital and patients, and all such managers present shall sign the same.

7. Make to the commission, in October of each year, a detailed report of the results of their visits and inspection, with suitable suggestions and such other matters as may be required of them by the commission, for the year ending on the thirtieth day of September preceding the date of such report. The resident officers shall admit such managers into every part of the hospital and its buildings, and exhibit to them on demand all the books, papers, accounts and writings belonging to the hospital or pertaining to its business, management, discipline or government, and furnish copies, abstracts and reports whenever required by them.

[L. 1874, ch. 446, tit. III, § 2; R. S., 8th ed., p. 2163,

Id. tit. IV, § 2; R. S., 8th ed., p. 2168,

Id. tit. V, § 2; R. S., 8th ed., p. 2170,

Id. tit. VI, § 3; R. S., 8th ed., p. 2171,

Id. tit. VII, § 3; R. S., 8th ed., p. 2172,

L. 1874, ch. 446, tit. III, § 27, tit. IV, § 8; R. S., 8th ed., p. 2167,

L. 1879, ch. 45; R. S., 8th ed., p. 2178,

L. 1879, ch. 280, §§ 7, 18; R. S., 8th ed., p. 2178,

L. 1887, ch. 375, § 2; R. S., 8th ed., p. 2190,

Subdivision 1, L. 1887, ch. 375, § 2; R. S., 8th ed., p. 2190, without change in substance.

Subdivision 2, L. 1874, ch. 446, tit. III, § 9; R. S., 8th ed., p. 2163,

L. 1879, ch. 280, § 17; R. S., 8th ed., p. 2182,

L. 1887, ch. 357, § 2; R. S., 8th ed., p. 2190,

without material change in substance.

Subdivisions 3, 6, 7, L. 1874, ch. 446, tit. III, § 13; R. S., 8th ed., p. 2164,

L. 1879, ch. 280, § 17; R. S., 8th ed., p. 2182,

L. 1887, ch. 375, § 2; R. S., 8th ed., p. 2190,

without change in substance.

Subdivision 4, L. 1874, ch. 446, tit. III, § 12; R. S., 8th ed., p. 2164.

L. 1887, ch. 375, § 2; R. S., 8th ed., p. 2190,

without change in substance.

Subdivision 5, new,

L. 1874, ch. 446, tit. III, § 14; R. S., 8th ed., p. 2164,

L. 1887, ch. 375, § 5; R. S., 8th ed., p. 2191,

without change in substance.】

§ 34. Appointments of officers by managers.—Each of such boards shall continue to appoint for its hospital, as often as vacancies occur therein:

1. A superintendent, who shall be a well-educated physician and a graduate of an incorporated medical college, of at least five years' actual experience in an institution for the care and treatment of the insane. The superintendents and all assistant physicians of homeopathic hospitals for the insane shall be homeopathic physicians, but such homeopathic physicians shall not be eligible to appointment in or transfer to state hospitals that are not for homeopathic treatment.

2. A treasurer, who shall keep all the books, records and papers pertaining to his official duties, in an office situated where the board of managers may direct, who shall give an undertaking to the people of the state for the faithful performance of his trust, with sureties to be approved by the county judge of the county or a justice of the supreme court of the judicial district in which such hospital is located, and in such amount as the comptroller of the state shall name. Such superintendent or treasurer may be removed by a vote of a majority of the board of managers for cause stated in writing, an opportunity having been given them to be heard, and such action shall be final.

[L. 1874, ch. 446, tit. III, § 3; tit. IV, § 3; tit. V, § 3; tit. VI, § 4; tit. VII, § 7, as amended by

L. 1893, ch. 247; R. S., 8th ed., p. 2164,

L. 1879, ch. 280, § 8, as amended by

L. 1892, ch. 276; R. S., 8th ed., p. 2180,

L. 1887, ch. 375, § 3; R. S., 8th ed., p. 2190,

L. 1893, ch. 214, § 2,

L. 1894, ch. 707, § 4,

L. 1895, ch., 628, § 6.

There is no substantial change in this proposed re-enactment. The provisions that the superintendent should be a physician of five years' experience in an institution for the treatment of the insane is contained in none of the statutes, except that establishing the Long Island State hospital.

The provision that such officers may be removed by the board is new, although under the present law, the power of appointment may include the power of removal.]

§ 35. General powers and duties of superintendent. — The superintendent of each hospital shall be its chief executive officer, and in his absence or sickness, the first assistant physician or other officer designated by the superintendent shall perform the duties and be subject to the responsibilities of the superintendent. Subject to the by-laws and regulations established by the board of managers, the superintendent shall have the gen-

eral superintendence of the buildings, grounds and farm, together with their furniture, fixtures and stock, and the direction and control of all persons therein, and shall:

1. Personally maintain an effective supervision and inspection of all parts of the hospital and generally direct the care and treatment of the patients. To this end the superintendent shall personally examine the condition of each patient, within five days after his admission to the hospital, and shall regularly visit all of the wards or apartments for patients at such times as the rules and regulations of the hospital shall prescribe.

2. Appoint such resident officers, including a woman physician, and such employes as he may think proper and necessary for the economical and efficient performance of the business of the hospital and prescribe their duties and discharge any of such employes in his discretion. The number of such resident officers and employes shall be determined by the commission. The superintendent may remove any resident officer for cause stated in writing, after an opportunity to be heard, and such action of the superintendent shall be final. Upon any such removal he shall make a record thereof, with the reasons therefor, under the appropriate head in one of the books of the hospital.

The superintendent, assistant physicians, including the woman physician, steward and matron shall constantly reside in the hospital, or on the premises, and shall be designated the resident officers of the hospital. The assistant physicians, including the woman physician, shall be graduates of an incorporated medical college, and shall possess such other qualifications as may be required by law.

3. Transmit, by mail, to the commission in lunacy, within five days after any such discharge, information of such discharge, and of the cause thereof. The commission shall preserve the name of such officer, or employe, with the facts relating to his discharge, in a book provided for that purpose.

4. Appoint such number of special policemen as may be determined, whose duty it shall be, under the orders of the superintendent, to arrest and return to the hospital insane persons who

may escape therefrom, and to preserve peace and good order in such hospital and to fully protect the grounds, buildings and patients. Such policemen shall possess all the powers of peace officers on the grounds and premises of such hospital and to the extent of one hundred yards beyond such grounds. The appointment of special policemen, in pursuance hereof, shall not be deemed to supersede, on the grounds and premises of such hospital, the authority of peace officers of the jurisdiction within which such hospital is located.

5. Give such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expense.

6. Maintain salutary discipline among all who are employed in the institution and enforce strict compliance with his instructions and uniform obedience to all rules and regulations of the hospital.

7. Establish and supervise a training school for attendants and nurses, under rules and regulations of the hospital.

8. Cause full and fair accounts and records of all his doings and of the entire business and operations of the hospital, to be kept regularly, from day to day, in books provided for that purpose.

9. See that all such accounts and records are fully made up to the last day of September in each year, and that the principal facts and results, with his report thereon, be presented to the managers within thirty days thereafter, who shall incorporate it in their report to the commission.

10. Keep a book, in which he shall cause to be entered at the time of reception of any patient, his name, residence and occupation, and the date of such reception, by whom brought and by what authority and on whose petition committed, and an abstract of all orders, warrants, requests, petitions, certificates and other papers accompanying such person.

[L. 1874, ch. 446, tit. III, §§ 10, 20; tit. IV, § 4; tit. V, § 3; tit. VI, § 4; tit. VII, § 7; R. S., 8th ed., p. 2164ff,

L. 1879, ch. 280, § 12; R. S., 8th ed., p. 2180,
L. 1887, ch. 375, §§ 4, 10; R. S., 8th ed., p. 2191,
L. 1890, ch. 273, § 17; R. S., 8th ed. (supp.), p. 5440,
L. 1893, ch. 214, § 2,
L. 1894, ch. 707, § 5,
L. 1895, ch. 628, §§ 8, 9,
L. 1895, ch. 693, 1.

The first paragraph is a re-enactment without material change.

Subdivision 1 is a re-enactment without change.

Subdivisions 2 and 3 are the same as contained in the acts establishing the several hospitals, except that the superintendent is here given absolute power of appointment and discharge without the concurrence of the board of managers: This is now the law as to the Long Island State hospital (L. 1895, ch. 628, § 8.). The provision relating to women physicians is taken from L. 1890, ch. 243.

Subdivision 4 is a re-enactment without change.

Subdivision 5 is L. 1890, ch. 273, § 16, without change.

Subdivision 6 is taken from L. 1874, ch. 446, tit. I, § 35, as amended by L. 1895, ch. 855, with only slight changes in language.

The remainder of this section is re-enacted without change in substance.]

§ 36. The general and medical superintendents of the Long Island and Manhattan state hospitals.—There shall be a general superintendent of the Long Island state hospital and a general superintendent of the Manhattan state hospital, each of whom, as often as vacancies occur, shall be appointed by the board of managers of each such hospital. General superintendents shall be subject to removal by a vote of a majority of such board for cause stated in writing, after an opportunity to be heard, and such action shall be final. Such general superintendent shall possess the same qualifications as the superintendent of other state hospitals, and shall have the same general powers and duties as provided by section thirty-five of this chapter. The general superintendent of the Long Island State hospital shall appoint two medi-

cal superintendents, one for the part of the hospital located at Kings Park, and one for that at Brooklyn. The general superintendent of the Manhattan State hospital shall appoint three medical superintendents, two of whom shall reside at Ward's island, one for the men's department and one for the women's department, and one at Central Islip. Each general superintendent shall appoint a steward for each hospital and as many matrons as the necessities of the hospital may require. The medical superintendents and other resident officers may be removed by such general superintendents, for cause stated in writing, after an opportunity to be heard, and such action of the general superintendents shall be final. The medical superintendents so appointed shall have the same statutory qualifications as superintendents of other state hospitals. Each shall have the powers and perform the duties prescribed by the general superintendent, and shall be subject to the direction and control of such general superintendent and the rules and regulations of the hospital.

[L. 1895, ch. 628, §§ 6, 8,

L. 1896, ch. 2, §§ 5, 7.

Long Island State hospital comprises two parts, one at Kings Park, the other at Brooklyn, situated several miles apart. The Manhattan State hospital is composed of three parts. The office of general superintendent is retained, together with the medical superintendents over the parts of each of these hospitals.

The present law does not clearly define the duties of these superintendents. We have provided that the general superintendent shall possess general supervising powers, and that, subject to his direction and control, the medical superintendents shall each possess the powers and perform the duties of superintendents in respect to the part assigned to them.]

§ 37. Meetings of superintendents.— The superintendents of the several state hospitals, or their representatives, including the general superintendents of the Long Island and Manhattan state hospitals and, in the discretion of each board of managers, one member of each board to be designated by it, shall meet at

least once in every month, on a day to be appointed by the commission, at the office of the commission at Albany, or at such other place as may be designated by it, to consult with such commission with reference to matters relating to the care and maintenance of the state hospitals and particularly with reference to the purchase of supplies for their use.

[L. 1893, ch. 214, § 2,
without change in substance.]

§ 38. Salaries of officers and wages of employes.—The commission, from time to time, with the approval in writing of the governor, secretary of state and comptroller, shall fix the annual salaries of the resident officers and treasurers of the state hospitals, which shall be uniform for like services. They shall classify the other officers and employes into grades, and determine the salaries and wages to be paid in each grade, which shall be uniform in all the hospitals. The salaries and wages shall be included in the monthly estimates and paid in the same manner as other expenses of the state hospitals. Food supplies shall be allowed to officers and employes and the families of the superintendents, general superintendents, medical superintendents, first assistant physicians and stewards. Food supplies shall continue to be allowed the families of the assistant physicians, residing at the hospitals on January first, eighteen hundred and ninety-six. Such families shall consist only of the wives and minor children of such officers; no other persons, except those regularly employed, shall be allowed rooms and maintenance, except at a rate to be fixed by the commission; such supplies shall be drawn from the supplies provided for general hospital use.

[L. 1895, ch. 693.

This section is so changed that food supplies will not be furnished the families of assistant physicians appointed after January 1, 1896. The limitation upon the families of officers to be supported is new.]

§ 39. Monthly estimates of expenses; contingent fund.—The superintendent of each of the state hospitals shall, on or before the fifteenth day of each month, cause to be prepared triplicate estimates in minute detail, of the expenses required for the hospital of which he is superintendent, for the ensuing month. He shall submit two of such triplicates to the commission and file the third copy in the office of the superintendent. The commission may revise estimates for supplies or other expenditures either as to quantity, quality, or the estimated cost thereof, and shall certify that it has carefully examined the same and that the articles contained in such estimate, as approved or revised by it, are actually required for the use of the hospital, and shall thereupon present such estimate and certificate to the comptroller. Upon the revision and approval of such estimate by the commission, the comptroller shall authorize the boards of managers to make drafts on the comptroller, as the money may be required for the purposes mentioned in such estimates, which drafts shall be paid on the warrant of the comptroller, out of the funds in the treasury of the state held for the care of the insane and the maintenance of state hospitals. In every such estimate, there shall be a sum named, not to exceed one thousand dollars, as a contingent fund for which no minute detailed statement need be made. No expenditure shall be made from such contingent fund, except in case of actual emergency, requiring immediate action and which can not be deferred without incurring loss or danger to the hospital or the inmates thereof. No money shall be expended for the use of any of the state hospitals, except as provided in this section. Libraries may be furnished to any state hospital by the regents of the university of the state of New York, subject to regulations adopted by them and the commission, the expense of which shall be included in the monthly estimates of the hospital.

[L. 1893, ch. 214, §§ 1-2, and L. 1895, ch. 693,
without change of substance.]

§ 40. Powers and duties of treasurer.—The treasurer of each hospital shall:

1. Have the custody of all moneys received from the comptroller on account of estimates made by the superintendent and revised and approved by the commission, and keep an accurate account thereof.

2. Have the custody of all bonds, notes, mortgages and other securities and obligations belonging to the hospital.

3. Receive all money for the care and treatment of private patients and other sources of revenue of the hospital.

4. Deposit all such money in a bank designated by the comptroller conveniently near the hospital, in his name as treasurer, and send each month to the comptroller, to the commission and to the board of managers a statement, showing the amount so received and deposited, and from whom and for what received, and when such deposits were made. Such statement of deposit shall be certified by the proper officer of the bank receiving such deposit. The treasurer shall make an affidavit to the effect that the sum so deposited is all the money received by him, from any source of hospital income, up to the time of the last deposit appearing on such statement. A bank designated by the comptroller to receive such deposits shall, before any deposit is made, execute a bond to the people of the state, in a sum approved by the comptroller, for the safe keeping of the funds deposited.

5. Pay out the money deposited for the uses of the state hospital, upon the voucher of the steward, approved by the superintendent in accordance with the estimates made by the superintendent and revised and approved by the commission.

6. Keep full and accurate accounts of all receipts and payments, in the manner directed in the by-laws and according to books and forms prescribed and furnished by the commission.

7. Balance all accounts on his books, annually, on the last day of September, and make a statement thereof and an abstract of the receipts and payments of the past year and deliver the same, within ten days, to the executive committee of the managers,

who shall compare the same with the books and vouchers and verify the results by further comparison with the books of the steward, and certify in regard to the correctness thereof to the managers at their next meeting.

8. Render an account of the state of the books and the funds and other property in his custody, whenever required by the managers, or the commission.

9. Execute a release and satisfaction of a mortgage, judgment or other lien or debt in favor of the hospital, when paid.

[L. 1874, ch. 446, tit. III, § 15; tit. IV, § 9; R. S., 8th ed., p. 2165,

L. 1879, ch. 280, § 13; R. S., 8th ed., p. 2181,

L. 1887, ch. 375, § 6; R. S., 8th ed., p. 2191,

L. 1893, ch. 214, § 3.

These sections are consolidated. The attempt has been made to preserve all the powers and duties imposed by these acts which are not inconsistent with each other, or rendered nugatory by the scheme of supervising accounts of state hospitals by the act of 1893 (ch. 214).]

§ 41. Monthly statements of receipts and expenditures; vouchers.—The treasurer of each state hospital shall, on or before the fifteenth day of each month, make to the comptroller and to the commission a full and perfect statement of all the receipts and expenditures, specifying the several items, for the last preceding calendar month. Such statement shall be verified by the affidavit of the treasurer attached thereto, in the following form:

I,, treasurer of the state hospital, do solemnly swear that I have deposited in the bank designated by law for such purpose, all the moneys received by me on account of the hospital during the last month, and I do further swear that the foregoing is a true abstract of all the moneys received and payments made by me or under my direction as such treasurer during the month ending on the day of, 18..

There shall also be attached thereto the affidavit of the steward,

to the effect that the goods and other articles therein specified were purchased and received by him, and under his directions, at the hospital; that the goods were purchased at a fair cash market price and paid for in cash, or on credit, not exceeding thirty days, and that he, or any person in his behalf, had no pecuniary or other interest in the articles purchased; that he received no pecuniary or other benefit therefrom in the way of commission, percentage, deductions or presents, or in any other manner whatever, directly or indirectly; that the articles contained in such bill were received at the hospital; that they conformed in all respects to the invoiced goods received and ordered by him, both in quality and quantity. Such statement shall be accompanied by the voucher showing the payment of the several items contained in the statement and the approval thereof by the superintendent, the amount of such payment and for what the payment was made. Such approval may be contained on an audit sheet, which shall refer to each voucher approved by the superintendent, giving the number of voucher, the name of the claimant and the amount at which it was approved. Such vouchers shall be examined by the commission and compared with the estimates made for the month for which the statement is rendered, and if found correct shall be indorsed and forwarded by the commission, with the statement to the comptroller. If any voucher is found objectionable, the comptroller shall indorse his disapproval thereon, with the reason therefor, and return it to the treasurer, who shall present it to the superintendent for correction, and when corrected return it to the comptroller. All such vouchers shall be filed in the office of the comptroller.

[L. 1893, ch. 214, § 4,
without material change.]

§ 42. Actions to recover moneys due the hospital.—The treasurer of any state hospital may bring an action in the name of the hospital, to recover for the use thereof:

1. The amount due upon any note or bond in his hands belonging to the hospital.

2. The amount charged and due, according to the by-laws of the hospital, for the support of any patient therein, or for actual disbursements made in his behalf for necessary clothing and traveling expenses.

3. Upon any cause of action accruing to the hospital.

[L. 1874, ch. 446, tit. III, §§ 16, 17; R. S., 8th ed., p. 2165,
L. 1887, ch. 375, §§ 7, 8; 8th ed., p. 2192,
L. 1894, ch. 707, § 7,
without material change in substance.]

§ 43. General powers and duties of the steward.—The steward, under the direction of the superintendent, shall be accountable for the careful keeping and economical use of all furniture, stores and other articles provided for the hospital, and under the direction of the superintendent, shall:

1. Make all purchases for the hospital and preserve the original bills and receipts thereof, and keep full and accurate accounts of the same.

2. Prepare and keep the pay-rolls of the hospital.

3. Keep the accounts for the support of patients and expenses incurred in their behalf, and furnish the treasurer statements thereof as they fall due.

4. Notify the treasurer of the death or discharge of any reimbursing or pay patient, within five days after such death or discharge.

[L. 1874, ch. 446, tit. III, § 18; R. S., 8th ed., p. 2165,
L. 1879, ch. 280, § 14; R. S., 8th ed., p. 2181,
L. 1887, ch. 375, § 9; R. S., 8th ed., p. 2192,
L. 1893, ch. 214, §§ 2, 3,
L. 1894, ch. 707, § 9,
L. 1895, ch. 693.

These sections are here re-enacted with only such changes as are necessary to conform with the inconsistent provisions thereof.]

§ 44. Purchases.— All purchases of supplies for the use of the hospital shall be made for cash or on credit or time, not exceeding sixty days; every voucher shall be duly filled up, and with every abstract of vouchers paid, there shall be proof on oath that the voucher was properly filled up and the money paid. No expenditures for supplies or other purposes shall be made by the board of managers of any state hospital for the benefit of such hospital, by contract or otherwise, unless in conformity with the provisions of this act in relation to estimates. No manager or officer of a hospital shall be interested, directly or indirectly, in the furnishing of material, labor or supplies for the use of the hospital, nor shall any manager or officer act as attorney or counsel for such hospital. Contracts may be entered into jointly, by the representatives of the managers of two or more of the state hospitals, for such staple articles of supplies, as it may be found feasible, by the commission, for the hospitals to purchase in bulk under such contracts. Such contracts shall not be let except in conformity with the provisions of this act relating to estimates. Such contracts shall be executed by one of such representatives of the managers to be designated by them. The state hospitals may manufacture such supplies and materials to be used in any of such hospitals as can be economically made therein.

【L. 1874, ch. 446, tit. III, § 28; R. S., 8th ed., p. 2167,

L. 1879, ch. 280, § 19; R. S., 8th ed., p. 2182,

L. 1887, ch. 375, § 13; R. S., 8th ed., p. 2193,

L. 1894, ch. 707, § 10,

L. 1895, ch. 693, § 1,

without material change in substance.

All contracts are now to be let in conformity with the estimate law, § 39. Managers and officers not to be interested in contracts; this provision is new, but see Penal Code, § 473. The last sentence is new, and was inserted by the assembly committee after the bill had been submitted to the legislature by this commission.】

§ 45. Official oath.— Each superintendent, treasurer and steward of a hospital, before entering upon his duties as such, shall

take the constitutional oath of office and file the same in the office of the secretary of state.

[L. 1874, ch. 446, tit. III, § 8; R. S., 8th ed., p. 2163, without change in substance.

As to official oaths generally, see Public Officers' Law, §§ 10, 13, 15 and 20.]

§ 46. Actions against commissioners in lunacy, or officers of state hospitals.—No civil action shall be brought in any court against the commission or a commissioner in lunacy, or an officer or manager of a state hospital, for alleged damages because of any act done or failure to perform any act, while discharging their official duties, without leave of a judge of the supreme court, first had and obtained. Any just claim for damages against such commission or commissioner, officer or employe for which the state would be legally or equitably liable, may be paid out of any moneys appropriated for the care of the insane.

[This section is new.]

§ 47. Private institutions for the insane.—No person, association or corporation shall establish or keep an institution for the care, custody or treatment of the insane, for compensation or hire, without first obtaining a license therefor from the commission. Every application for such license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the commission may require. The commission shall not grant any such license without first having made an examination of the premises proposed to be licensed, and being satisfied that they are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. The commission may, at any and all times, examine and ascertain how

far a licensed institution is conducted in compliance with the license therefor, and after due notice to the institution and opportunity for it to be heard, the commission having made a record of the proceeding upon such hearing, may, if the interests of the inmates of the institution so demand, for just and reasonable cause then appearing and to be stated in its order, amend or revoke any such license by an order to take effect within such time after the service thereof upon the licensee, as the commission shall determine.

[L. 1890, ch. 273, § 12; R. S., 8th ed. (supp.), p. 3439,
L. 1874, ch. 446, tit. IX, §§ 1, 2; R. S., 8th ed., p. 2173.
are re-enacted without substantial change.]

§ 48. Recommendations of commission.—The authorities of each institution for the insane shall place on file in the office of the institution, the recommendations made by the commissioners as a result of their visits, for the purpose of consultation by such authorities, and for reference by the commissioners upon their visits.

[L. 1890, ch. 273, § 15; R. S., 8th ed. (supp.), p. 3440,

The requirement of a “commissioners’ visiting book,” to be kept by the authorities of the several institutions is omitted. It is now obsolete, as the commission have adopted the method of dictating their recommendations to stenographers and forwarding typewritten copies to such institutions. The engrossing at length of suggestions and recommendations in a book provided for that purpose has been found to be impracticable.]

§ 49. Visitors to state hospitals.—Justices of the supreme court are authorized to appoint visitors to state hospitals, upon nomination of the state charities aid association, as provided by law.

[New. See L. 1893, ch. 635, § 1.]

ARTICLE III.

Commitment, Custody and Discharge of the Insane.**Section 60. Order for commitment of an insane person.**

61. Medical examiners in lunacy; certificates of lunacy.
62. Proceedings to determine the question of insanity.
63. Appeal from order of commitment.
64. Costs of commitment.
65. Liability for care and support of poor and indigent insane.
66. Liability for the care and support of the insane, other than the poor and indigent.
67. Duties of local officers in regard to the insane.
68. Duty of committee and others to care for the insane; apprehension and confinement of a dangerous insane person.
69. Patients admitted under special agreement.
70. Entries in case book.
71. Transfer of patients when hospital is overcrowded.
72. Investigation into the care and treatment of the insane.
73. Habeas corpus.
74. Discharge of patients.
75. Clothing and money to be furnished discharged patients.
76. Transfer of nonresident patients.
77. Insane Indians.

§ 60. Order for commitment of an insane person.—A person alleged to be insane and who is not in confinement on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane, upon an order made by a judge of a court of record of the city or county, or a justice of the supreme court of the judicial district, in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of lunacy made by two qualified medical examiners in lunacy, accompanied by a verified petition there-

for, or upon such certificate and petition, and after a hearing to determine such question, as provided in this article. The commission shall prescribe and furnish blanks for such certificates and petitions, which shall be made only upon such blanks. An insane person shall be committed only to a state hospital, a duly licensed institution for the insane, or the Matteawan State hospital, or to the care and custody of a relative or committee, as hereinafter provided. No idiot shall be committed to or confined in a state hospital. But any epileptic or feeble-minded person becoming insane may be committed as an insane person to a state hospital for custody and treatment therein.

【Substitute for L. 1874, ch. 446, tit. I, § 1 in part; R. S., 8th ed., p. 2155.

Under the law as it now is, a person may be confined in an asylum upon the certificate of two physicians, under oath, setting forth the insanity of such person, which certificate is to be approved by the court within five days after the confinement of such person.

Under the proposed revision the order of the court must issue upon the certificate of two physicians and the petition of the applicant before the insane person can be confined.

The following section contains the proceedings for determining the insanity of a person.】

§ 61. Medical examiners in lunacy; certificates of lunacy.—The certificate of lunacy must show that such person is insane and must be made by two reputable physicians, graduates of an incorporated medical college, who have been in the actual practice of their profession at least three years, and have filed with the commission a certified copy of the certificate of a judge of a court of record, showing such qualifications in accordance with forms prescribed by the commission.

Such physicians shall jointly make a final examination of the person alleged to be insane within ten days next before the granting of the order. The date of the certificate of lunacy shall be the date of such joint examination.

Such certificate of lunacy shall be in the form prescribed by the commission, and shall contain the facts and circumstances upon which the judgment of the physicians is based and show that the condition of the person examined is such as to require care and treatment in an institution for the care, custody and treatment of the insane.

Neither of such physicians shall be a relative of the person applying for the order or of the person alleged to be insane, or a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly, or be an attending physician in the institution to which it is proposed to commit such person.

[L. 1894, ch. 446, tit. I, §§ 1, 2; R. S., 8th ed., p. 2155,

L. 1890, ch. 273, § 7; R. S., 8th ed. (supp.), p. 3437,

with such change as is necessary because of the suggested method of commitment.

The order of the court issues after the certificate of lunacy is made. The present law requires no order. The provision that the certifying physicians shall not be relatives of either party is new. The examination made by the two physicians is to be joint, and the date of the certificate is to be the date of the joint examination.]

§ 62. Proceedings to determine the question of insanity.—Any person with whom an alleged insane person may reside or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of any such person, and any overseer of the poor of the town, and superintendent of the poor of the county in which any such person may be, may apply for such order, by presenting a verified petition containing a statement of the facts upon which the allegation of insanity is based, and because of which the application for the order is made. Such petition shall be accompanied by the certificate of lunacy of the medical examiners, as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person

alleged to be insane, and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person may reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reason for dispensing with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith.

The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane. If, however, it appears that such insane person is harmless and his relatives or a committee of his person are willing and able to properly care for him, at some place other than such institution, upon their written consent, the judge may order that he be placed in the care and custody of such relatives or such committee. Such judge may, in his discretion, require other proofs in addition to the petition and certificate of the medical examiners.

Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon such other day to which the proceeding shall be regularly adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, in or out of court, and render a decision in writing as to such person's insanity. If it be determined that such

person is insane, the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane, or make such other order as is provided in this section. If such judge can not hear the application he may, in his order directing the hearing, name some referee, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If the commitment be made to a state hospital, the order shall be accompanied by a written statement of the judge as to the financial condition of the insane person and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of such state hospital shall be immediately notified of such commitment, and he shall, at once, make provisions for the transfer of such insane person to such hospital.

The petition of the applicant, the certificate in lunacy of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee, and the order of commitment shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed, and verbatim copies shall be forwarded by such superintendent or person in charge and filed in the office of the state commission in lunacy. The relative, or committee, to whose care and custody any insane person is committed, shall forthwith file the petition, certificate and order, in the office of the clerk of the county where such order is made, and transmit a certified copy of such papers, to the commission in lunacy, and procure and retain another such certified copy.

The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not insane within the meaning of this statute, or if received, such person may be discharged by the commission. No person shall be

admitted to any such institution under such order after the expiration of five days from and inclusive of the date thereof.

[This section is a substitute for the method of commitment now contained in the statute. See L. 1874, ch. 446, tit. I, §§ 1-4, 12; R. S., 8th ed., p. 2155.

L. 1890, ch. 273, § 7; R. S., 8th ed. (supp.), p. 3437.

A person is now committed upon the certificate of two medical examiners, approved by a judge of a court of record. The alleged insane person may be confined upon the certificate in lunacy for five days preceding the approval of the judge. The judge may, in his discretion, take proofs as to any alleged lunacy before approving the certificate, or he may call a jury to determine the question.

By the proposed proceedings application is to be made to a court of record by verified petition, stating the facts upon which the allegation of insanity is based. Such petition is to be accompanied by the certificate in lunacy of two medical examiners.

Provision is made for the service of a notice of the application upon the alleged insane person and his relatives.

Upon the petition and certificate the judge may issue his order of commitment.

If a relative or friend of an alleged insane person demand a hearing and a trial of the issue, or if the judge deem a trial necessary for complete justice, he must issue an order directing a hearing before him or a referee appointed by him, at which all the parties interested may be present and testify as to the condition of the alleged insane person.

It is not intended by this change to provide a trial of the issue in every case of alleged insanity. In a majority of the cases the insanity of the person is clearly apparent, and there is no occasion for an extended hearing. In such cases it is for the material advantage of all parties interested that the person be confined in an institution for the custody and treatment of the insane. There may be cases, however, where the insanity of the person may be in doubt, or where the applicants for the order of commitment are pecuniarily or otherwise interested in securing the confine-

ment of the alleged lunatic. These cases should be carefully scrutinized and every opportunity be given to the alleged lunatic or to other persons interested in his welfare, to be heard if they so desire.

The provision that the judge issuing the order of commitment of an insane person to a state hospital shall make a statement, in writing, to accompany the order, of the financial condition of the person committed is new. It is presumed that the judge will ascertain such condition, and the information acquired will be of use to the hospital authorities and the commission in lunacy in securing from the estate of the person committed, or his relatives legally liable for his support, compensation for his maintenance at the hospital.]

§ 63. Appeal from order of commitment. — If a person ordered to be committed, pursuant to this chapter, or any friend in his behalf, is dissatisfied with the final order of a judge or justice committing him, he may, within ten days after the making of such order appeal therefrom to a justice of the supreme court other than the justice making the order, who shall cause a jury to be summoned as in case of proceedings for the appointment of a committee for an insane person, and shall try the question of such insanity in the same manner as in proceedings for the appointment of a committee. Before such appeal shall be heard, such person shall make a deposit or give a bond, to be approved by a justice of the supreme court, for the payment of the costs of the appeal, if the order of commitment is sustained. If the verdict of the jury be that such person is insane, the justice shall certify that fact and make an order of commitment as upon the original hearing. Such order shall be presented, at the time of the commitment of such insane person, to the superintendent or person in charge of the institution to which the insane person is committed, and a copy thereof shall be forwarded to the commission by such superintendent or person in charge and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon

an order of a justice of the supreme court, and made upon a notice, and after a hearing, with provisions made therein for such temporary care or confinement of the alleged insane person as may be deemed necessary.

If a judge shall refuse to grant an application for an order of commitment of an insane person proved to be dangerous to himself or others, if at large, he shall state his reasons for such refusal in writing, and any person aggrieved thereby may appeal therefrom in the same manner and under like conditions as from an order of commitment.

[L. 1874, ch. 446, tit. I, § 11; R. S., 8th ed., p. 2157,

It is proposed in this section to provide an appeal from an order of commitment in the same manner as is provided for appeals in cases of appointment of committees for insane persons. The present method of a rehearing is not materially changed. (See Code of Civil Procedure, § 2307f.) The requirement of a bond or deposit by the person appealing is new.]

§ 64. Costs of commitment.—The costs necessarily incurred in determining the question of the insanity of a poor or indigent person and in securing his admission into a state hospital, and the expense of providing proper clothing for such person, in accordance with the rules and regulations adopted by the commission, shall be a charge upon the town, city or county securing the commitment. Such costs shall include the fees allowed by the judge or justice ordering the commitment to the medical examiners. If the person sought to be committed is not a poor or indigent person, the costs of the proceedings to determine his insanity and to secure his commitment, as provided in this article, shall be a charge upon his estate, or shall be paid by the persons legally liable for his maintenance. If in such proceedings, the alleged insane person is determined not to be insane, the judge or justice may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered for the amount thereof and enforced by execution against such person.

[This section is new. The amount of the costs are in the discretion of the court. See Code Civil Procedure, § 3240.]

§ 65. Liability for care and support of poor and indigent insane.—All poor and indigent insane persons not in confinement under criminal proceedings, shall, without unnecessary delay, be transferred to a state hospital and there wholly supported by the state. The costs necessarily incurred in the transfer of patients to state hospitals shall be a charge upon the state. The commission shall secure from relatives or friends who are liable or may be willing to assume the costs of support of inmates of state hospitals supported by the state, reimbursement, in whole or in part, of the money thus expended.

[L. 1890, ch. 126, § 11; R. S., 8th ed. (supp.), p. 3419.]

By this section all poor and indigent insane were made a state charge; to this extent it is re-enacted in this section. The last sentence imposes a power upon the commission in lunacy not formerly possessed. A similar power is vested in the treasurers of the state hospitals by § 42, ante, and in superintendents and overseers of the poor by §§ 914-915 of the Code of Criminal Procedure.]

§ 66. Liability for the care and support of the insane other than the poor and indigent.—The father, mother, husband, wife and children of an insane person, if of sufficient ability, and the committee or guardian of his person and estate, if his estate is sufficient for the purpose, shall cause him to be properly and suitably cared for and maintained.

The commission and the superintendent of the poor of the county, and the overseer of the poor of the town where any such insane person may be, or in the city of New York, the commissioners of public charities, and in Brooklyn, the commissioners of charities and correction, may inquire into the manner in which any such person is cared for and maintained; and if, in the judgment of any of them, he is not properly or suitably cared for, may apply to a judge of a court of record for an order to commit him to a

§ 68. Duty of committee and others to care for the insane; apprehension and confinement of a dangerous insane person. — When an insane person is possessed of sufficient property to maintain himself, or his father, mother, husband, wife or children are of sufficient ability to maintain him, and his insanity is such as to endanger his own person, or the person and property of others, the committee of his person and estate, or such father, mother, husband, wife, or children must provide a suitable place for his confinement, and there maintain him in such manner as shall be approved by the proper legal authority. The county superintendent of the poor and the overseers of the poor of towns and cities, the commissioners of public charities in the city of New York, and the commissioners of charities and correction in the city of Brooklyn, are required to see that the provisions of this section are carried into effect in the most humane and speedy manner.

Upon the refusal or neglect of a committee, guardian or relative of an insane person to cause him to be confined, as required in this chapter, the officers named in this section shall apply to a judge of a court of record of the city or county, or to a justice of the supreme court of the judicial district in which such insane person may reside or be found, who, upon being satisfied, upon proper proofs, that such person is dangerously insane and improperly at large, shall issue a precept to one or more of the officers named, commanding them to apprehend and confine such insane person in some comfortable and safe place; and such officers in apprehending such insane person shall possess all the powers of a peace officer executing a warrant of arrest in a criminal proceeding. Unless an order of commitment has been previously granted, such officers shall forthwith make application for the proper order for his commitment to the proper institution for the care, custody and treatment of the insane, as authorized by this chapter, and if such order is granted, such officer shall take the necessary legal steps to have him transferred to such institution. In no case shall any such insane person be confined in any other place than a state hospital or duly licensed

institution for the insane, for a period longer than ten days, nor shall such person be committed as a disorderly person to any prison, jail or lockup for criminals, unless he be violent and dangerous, and there is no other suitable place for his confinement, nor shall he be confined in the same room with a person charged with or convicted of crime.

Any person apparently insane, and conducting himself in a manner which in a sane person would be disorderly, may be arrested by any peace officer and confined in some safe and comfortable place until the question of his sanity be determined, as prescribed by this chapter. The officer making such arrest shall immediately notify the superintendent of the poor of the county, or the overseers of the poor of the town or city, or, in the city of New York, the commissioners of public charities, or, in the city of Brooklyn, the commissioners of charities and correction, who shall forthwith take proper measures for the determination of the question of the insanity of such person.

[Pt. I, ch. 20, tit. III, §§ 1-6; R. S., 8th ed., p. 2153, L. 1874, ch. 446, tit. I, §§ 6, 8, 9, 37; R. S., 8th ed., p. 2157, are here re-enacted with such changes as are necessary to conform the inconsistent provisions of such sections. The only material change is that before confining the lunatic in an institution, the proper order of the court should be obtained. It is proposed that no insane person should be confined in a prison, jail or lockup, unless he is dangerous and no other suitable place for his confinement can be had. It is also provided that any peace officer may arrest an insane person conducting himself in a disorderly manner.]

§ 69. Patients admitted under special agreement.—The managers of a state hospital may authorize the superintendent to admit thereto, under special agreement, insane patients, who are residents of the state, other than poor and indigent insane persons, when there is room for such insane therein. But no patient shall be permitted to occupy more than one room in any state

hospital, nor shall any patient, his friends or relatives, be permitted to pay for his care and treatment therein a sum greater than ten dollars a week. Such patients, when so received, shall be subject to the general rules and regulations of the hospital. The amount agreed upon for the maintenance of such insane persons in a state hospital, shall be secured by a properly executed bond, and bills therefor shall be collected monthly. The commission may appoint agents, whose duty it shall be to secure from relatives and friends who are liable therefor, or who may be willing to assume the cost of support of any of the inmates of state hospitals as are being supported by the state, reimbursement in whole or in part of the money so expended. The compensation of each agent shall not exceed five dollars a day, and the necessary traveling and other incidental expenses incurred by him, to be approved by the comptroller.

[L. 1874, ch. 446, tit. III, § 22; R. S., 8th ed., p. 2166,
L. 1887, ch. 375, § 12; R. S., 8th ed., p. 2193,
L. 1893, ch. 214, § 7,
L. 1895, ch. 693, § 1,
are contained herein without material change.]

§ 70. Entries in case book.—Every superintendent or other person in charge of an institution for the care and treatment of the insane, shall, within three days after the reception of a patient, make, or cause to be made, a descriptive entry of such case in a book exclusively set apart for that purpose. He shall also make or cause to be made entries from time to time, of the mental state, bodily condition and medical treatment of such patient during the time such patient remains under his care, and in the event of the discharge or death of such person, he shall state in such case book the circumstances thereof, and make such other entries at such intervals of time and in such form as may be required by the commission.

[L. 1874, ch. 446, tit. I, § 4; R. S., 8th ed., p. 2156,
without change of substance.]

§ 71. Transfer of patients when hospital is overcrowded.—When the building of any state hospital shall become overcrowded with patients, or the number of buildings shall be reduced by fire, or other casualties, or for other cause, the commission may, in its discretion, cause the transfer of patients therefrom, or direct that patients required to be sent thereto, be transferred to another state hospital, where they can be conveniently received, or make, in special emergencies, temporary provision for their care, preference to be given in such transfers to a hospital in an adjoining rather than in a remote district. The expenses of such transfer shall be chargeable to the state, and the bills for the same, when approved by the commission, shall be paid by the treasurer of the state, on the warrant of the comptroller, out of any moneys provided for the support of the insane.

[L. 1890, ch. 126, §§ 8, 9; R. S., 8th ed. (supp.), p. 3419, consolidated and the unnecessary parts omitted. A part of § 9 is covered by § 65 of the revision.]

§ 72. Investigation into the care and treatment of the insane.—When the commission has reason to believe that any person adjudged insane is wrongfully deprived of his liberty, or is cruelly; negligently or improperly treated, or inadequate provision is made for his skillful medical care, proper supervision and safe keeping, it may ascertain the facts, or may order an investigation of the facts by one of its members. It, or the commissioner conducting the proceeding, may issue compulsory process for the attendance of witnesses and the production of papers, and exercise the powers conferred upon a referee in the supreme court. If the commission deem it proper, it may issue an order directed to any or all institutions, directing and providing for such remedy or treatment, or both, as shall be therein specified. If such order be just and reasonable, and be approved by a justice of the supreme court, who may require notice to be given of the application for such approval, it shall be binding upon any and all institutions and persons to which it is directed, and any willful

disobedience of such order shall be a criminal contempt and punishable as such. Whenever the commission shall undertake an investigation into the general management and administration of any institution for the insane, it may give notice to the attorney-general of any such investigation, and the attorney-general shall appear personally or by deputy and examine witnesses who may be in attendance. The commission, or any member thereof, may at any time visit and examine the inmates of any county or city alms-house, to ascertain if insane persons are kept therein.

[L. 1890, ch. 273, § 13, amending L. 1889, ch. 283, without material change.]

§ 73. Habeas corpus.— Any one in custody as an insane person is entitled to a writ of habeas corpus, upon a proper application made by him or some friend in his behalf. Upon the return of such writ, the fact of his insanity shall be inquired into and determined. The medical history of the patient, as it appears in the case book, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any proper person, shall be sworn touching the mental condition of such person.

[This section is new. See Code of Civil Procedure, §§ 2015ff.]

§ 74. Discharge of patients.— The superintendent of a state hospital, on filing his written certificate with the secretary of the board of managers, may discharge any patient, except one held upon an order of a court or judge having criminal jurisdiction in an action or proceeding arising out of a criminal offense at any time, as follows:

1. A patient who, in his judgment, is recovered.
2. Any patient who is not recovered but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient; provided, however, that before making such certificate, the superintendent shall satisfy himself, by sufficient proof, that friends or relatives of the patient are willing and financially able to receive and properly care for such patient after his discharge.

When the superintendent is unwilling to certify to the discharge of an unrecovered patient upon request, and so certifies in writing, giving his reasons therefor, any judge of a court of record in the judicial district in which the hospital is situated may, upon such certificate and an opportunity of a hearing thereon being accorded the superintendent, and upon such other proofs as may be produced before him, direct, by order, the discharge of such patient, upon such security to the people of the state as he may require, for the good behavior and maintenance of the patient. The certificate and the proof and the order granted thereon shall be filed in the clerk's office of the county in which the hospital is situated, and a certified copy of the order in the hospital from which the patient is discharged. The superintendent may grant a parole to a patient not exceeding thirty days, under general conditions prescribed by the commission.

The commission may, by order, discharge any patient in its judgment improperly detained in any institution. A poor and indigent patient discharged by the superintendent, because he is an idiot, or an epileptic, not insane, or because he is not a proper case for treatment within the meaning of this chapter, shall be received and cared for, by the superintendent of the poor or other authority having similar powers, in the county from which he was committed. A patient, held upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising from a criminal offense, may be discharged upon the superintendent's certificate of recovery, approved by any such court or judge.

[L. 1874, ch. 446, tit. III, § 24, as amended by

L. 1895, ch. 172,

L. 1889, ch. 280, § 21, as amended by

L. 1889, ch. 427,

with some changes.

The authority to grant a parole and the right of the commission to grant discharges are new provisions.]

§ 75. Clothing and money to be furnished discharged patients.—No patient shall be discharged from a state hospital without suitable clothing adapted to the season in which he is discharged; and if it can not be otherwise obtained, the steward shall, upon the order of the superintendent, furnish the same, and money not exceeding twenty-five dollars, to defray his necessary expenses until he can reach his relatives or friends, or find employment to earn a subsistence.

[L. 1874, ch. 446, tit. III, § 26; R. S., 8th ed., p. 2166, with no change in substance.]

§ 76. Transfer of nonresident patients.—If an order be issued by any judge, committing to a state hospital a poor or indigent person, who has not acquired a legal settlement in this state, the commission in lunacy shall return such insane person, either before or after his admission to a state hospital, to the country or state to which he belongs, and for such purpose may expend so much of the money appropriated for the care of the insane as may be necessary, subject to the audit of the comptroller.

[L. 1893, ch. 214, § 6, without material change.]

§ 77. Insane Indians.—Poor and indigent insane Indians living within this state or upon any of the Indian reservations shall be committed to, confined in, and discharged from the state hospitals for the insane in the same manner and under the same rules and regulations as other poor and indigent insane persons; and all the provisions of this chapter shall apply to the Indians residing within this state the same as to other persons.

[Substitute for L. 1888, ch. 451, § 4; R. S., 8th ed., p. 2146,

The powers of the state board of charities, relating to the care of the insane, were by ch. 283 of L. 1889, transferred to the state commission in lunacy. By ch. 126 of L. 1890, the care of the indigent insane was made a state charge. There can, then, in view of these changes made since 1888, be no impropriety in providing that the indigent insane Indians be maintained in the same manner as other insane.]

ARTICLE IV.

State Hospital for Insane Criminals.

- Section 90.** Establishment and purposes of the Matteawan State hospital.
- 91. Medical superintendent.
 - 92. Medical superintendent as treasurer of the hospital.
 - 93. Salaries of resident officers.
 - 94. Powers and duties of medical superintendent and assistants.
 - 95. Monthly estimates.
 - 96. Power of removal.
 - 97. Transfer of insane convicts to the Matteawan State hospital.
 - 98. Disposal of insane convicts after expiration of term of imprisonment.
 - 99. Convicts, on recovery, to be transferred to prison.
 - 100. Certificate of conviction to be delivered to medical superintendent and copy filed.
 - 101. Transfer from state hospital to Matteawan State hospital.
 - 102. Authority to recover for the support of patients.
 - 103. Tenure of office.
 - 104. Communications with patients.

Section 90. Establishment and purposes of the Matteawan State hospital.—The grounds, buildings and property located at Matteawan, in the county of Dutchess, and used for the purposes of the hospital for insane criminals, are hereby declared to be the Matteawan State hospital, to be used for the purpose of holding in custody and caring for such insane persons as may be committed to the said institution by courts of criminal jurisdiction, and for such convicted persons who may be declared insane while undergoing sentence at any of the various penal institutions of the state.

[L. 1893, ch. 81, § 1,
without change.]

§ 91. Medical superintendent.—The superintendent of state prisons shall, whenever there is a vacancy, appoint a medical superintendent for the Matteawan State hospital, who shall be a well-educated physician of at least five years' actual experience in a hospital for the care and treatment of the insane. The superintendent of state prisons, subject to the approval of the state commission in lunacy, shall make by-laws and regulations for the government of the hospital and the management of its affairs.

[L. 1893, ch. 81, § 2,
without change.]

§ 92. Medical superintendent as treasurer of the hospital.—The medical superintendent shall be the treasurer of the hospital, and before entering upon his duties, shall file with the comptroller of the state his undertaking to the people with sureties to be approved by the superintendent of state prisons, to the effect that he will faithfully perform his trust as such treasurer. He shall have the custody of the moneys, securities and obligations belonging to the hospital, and shall open with some bank, in the vicinity of the hospital, to be selected with the approval of the comptroller, an account in his name as such medical superintendent, and immediately deposit in such bank all moneys received by him as such medical superintendent and treasurer, and shall draw therefrom only for the use of the hospital and in the manner provided by the by-laws and upon the order of the steward, specifying the object of each payment. He shall keep a full and accurate account of the receipts and payments, as directed by the by-laws, and of such other matters as the superintendent of state prisons and the state commission in lunacy may prescribe, and balance all his accounts, annually, on the thirtieth day of September, and within ten days thereafter deliver to the superintendent of state prisons, a statement thereof and an abstract of such receipts and payments for the past year. His books and vouchers shall at all times be open to the inspection of the superintendent of state prisons and the commission, and they may at any time require of

him a statement of his accounts and of the funds and property in his custody.

[L. 1893, ch. 81, § 3,
without change.]

§ 93. Salaries of resident officers.—The superintendent of state prisons shall, from time to time, determine the annual salaries and allowances of the resident officers, provided they do not in the aggregate exceed twelve thousand dollars; and the same shall be paid quarterly, on the last days of March, June, September and December, by the treasurer of the state, on the warrant of the comptroller, out of any moneys in the treasury not otherwise appropriated, to the medical superintendent, on his presenting a bill of particulars thereof signed by the steward, and properly certified by such medical superintendent.

[L. 1893, ch. 81, § 4,
without change.]

§ 94. Powers and duties of medical superintendent and assistants.—The medical superintendent shall be the chief executive officer of the hospital and shall:

1. Have the general superintendence of the building and grounds, together with their furniture, fixtures and stock, and the direction and control of all persons therein, subject to the rules and regulations adopted by the superintendent of state prisons, with power to assign their respective duties.

2. Appoint such number of assistant physicians, not to exceed one for each two hundred inmates or fraction thereof, as the necessities of the institution may require, also a steward and matron, all of whom and the medical superintendent, shall reside in the hospital, and shall be known as the resident officers thereof.

3. Appoint such and so many attendants and other subordinate employes as he may think proper and necessary for the economical and efficient administration of the affairs of the hospital, and prescribe their several duties and places, and fix, with the approval of the superintendent of state prisons, their compensation,

and discharge any of them at his sole discretion; but in every case of discharge, so occurring, he shall, forthwith, enter the same with the reasons therefor, under an appropriate heading, in one of the record books of the hospital.

4. Give, from time to time, such orders and instructions as he may deem best calculated to insure good conduct, fidelity and economy in every department of labor and expense.

5. Maintain salutary discipline among all who are employed by the institution, and enforce strict compliance with all instructions and orders given by him, and uniform obedience to all the rules and regulations of the hospital.

6. Cause full and fair accounts and records of all his doings, and of the entire business and operations of the institution to be kept regularly, from day to day, in books provided for that purpose, in the manner and extent prescribed in the by-laws.

7. See that all accounts and records are fully made up to the last day of September in each year, and present the principal facts and results, with his report thereon, to the superintendent of state prisons, within forty days thereafter. The resident officers, before entering upon their duties as such, shall severally take and file in the office of the secretary of state, the constitutional oath of office. The first assistant physician shall perform the duties and be subject to the responsibilities of the superintendent in his sickness or absence. The steward may personally purchase any supplies for the use of such hospital, but only in the name of the medical superintendent, and in each instance by his direction and not otherwise.

[L. 1893, ch. 81, § 5,
without change.]

§ 95. Monthly estimates.—The medical superintendent shall cause an estimate to be made monthly, in accordance with forms to be approved by the state comptroller, of all moneys necessary for the support and maintenance of the hospital, which may be required to supplement the deficiencies in the earnings thereof. Such estimate shall be submitted to and examined by the superin-

tendent of state prisons, who, if he is satisfied that it is correct, and that the articles named therein are actually needed for the support and maintenance of the hospital, shall certify to the same, and on production of such estimate so certified, to the comptroller, he shall draw his warrant on the state treasurer for the amount thereof, and the state treasurer shall pay such amount to the medical superintendent of the hospital, out of any money in the treasury appropriated for the support of such hospital.

[L. 1893, ch. 81, § 6,
without change.]

§ 96. Power of removal. — The superintendent of state prisons may remove the medical superintendent, for cause shown, and an opportunity to such superintendent to be heard thereon, and such officer shall not be reappointed to the office of medical superintendent, or to any other position in said hospital.

[L. 1893, ch. 81, § 7,
without change.]

§ 97. Transfer of insane convicts to the Matteawan State Hospital. — Whenever the physician of either of the state prisons, county penitentiaries, or of the state reformatory or other penal institutions, shall report in writing to the warden or other officer in charge thereof, that any convict confined therein is, in his opinion, insane, such warden or other officer shall apply to a judge of a court of record to cause an examination to be made of such person by two legally qualified examiners in lunacy, other than a physician connected with such state prison, penitentiary, reformatory or penal institution, qualified to act as medical examiners in lunacy. Such examiners shall be designated by the judge to whom the application is made. Such examiners, if satisfied, after a personal examination, that such convict is insane, shall make a certificate to such effect in the form and manner prescribed by this chapter for the commitment of insane persons to state hospitals. Such warden or other person in charge shall apply to a judge of a court of record for an order transferring

such convict to the Matteawan State hospital, accompanying such application with such certificate in lunacy. Such judge, if satisfied that such convict is insane, shall issue such order of transfer, and such warden or other officer in charge shall thereupon cause such convict to be transferred to the Matteawan State Hospital and delivered to the medical superintendent thereof. At the time of such transfer, the certificate in lunacy and order of transfer shall be presented to such medical superintendent, and a copy thereof shall be placed on file in the office of the superintendent of state prisons. Such insane convict shall be received into such hospital and retained there until legally discharged. Such warden, or other officer in charge, before transferring such insane convict, shall see that he is bodily clean, and is provided with a new suit of clothing similar to that furnished to convicts on their discharge from prison. The costs necessarily incurred in determining the question of insanity, including the fees of the medical examiners, shall be a charge upon the state or the municipality at whose expense the institution from which the transfer is made or sought to be made is maintained.

[L. 1893, ch. 81, § 8,

L. 1874, ch. 446, tit. I, §§ 24, 26; R. S., 8th ed., p. 2160.

The sections last referred to are probably superseded by the act of 1893. A change in the method of transfer prescribed by ch. 81 of L. 1893 is made, and some of the requirements of the act of 1874 are re-enacted. The transfer of inmates from penal institutions to the hospital for insane criminals should be made upon some other authority than that of the physician of the institution. It is here suggested that the question of insanity be determined by legally qualified medical examiners in a manner similar to that required in the case of other persons alleged to be insane, and that the transfer be made upon the order of the court.]

§ 98. Disposal of insane convicts after expiration of term of imprisonment. — Whenever any convict in the Matteawan State hospital, under and by virtue of this act, shall continue to be insane at the expiration of the term for which he was sentenced,

he may be retained therein until he has recovered or is otherwise legally discharged. The medical superintendent of such hospital may discharge and deliver any patient whose sentence has expired, and who is still insane, but who, in the opinion of the superintendent is reasonably safe to be at large, to his relatives or friends who are able and willing to comfortably maintain him, without further public charge; and such patient may, in the discretion of the medical superintendent, be provided with the whole or a portion of such allowances as are hereinafter granted to recovered convicts. Whenever any convict, who, by reason of his insanity, shall have been retained beyond the date of the expiration of his sentence shall recover, he may be discharged by the medical superintendent, and such convict shall be entitled to ten dollars in money, suitable clothing and a railroad ticket to the county of his conviction or to such other place as he may designate at no greater distance. Similar allowances shall be made to patients committed by order of a court and who may be discharged. Any convict in the Matteawan State Hospital, whose term of imprisonment has expired by commutation or otherwise, and who is not recovered may, upon an order of the commission in lunacy, be transferred to any institution for the insane.

[L. 1893, ch. 81, § 9,
without change.

See also Code of Criminal Procedure, § 662.]

§ 99. Convicts on recovery to be transferred to prison.—Whenever any convict, who shall have been confined in such hospital as an insane person, shall have recovered before the expiration of his sentence, and the medical superintendent thereof shall so certify in writing to the agent and warden, or other officer in charge of the institution, from which such convict was received or to which the superintendent of state prisons may direct that he be transferred, such convict shall forthwith be transferred to the institution from which he came by the medical superintendent of the hospital, or, if received from one of the state prisons, to such state prison as the super-

intendent of state prisons may direct; and the agent and warden or other officer in charge of such institution shall receive such convict into such institution, and shall, in all respects, treat him as when originally sentenced to imprisonment. Any inmate not a convict, held upon an order of a court or judge, in a criminal proceeding, may be discharged therefrom, upon the superintendent's certificate of recovery, made to and approved by such court or judge.

**[L. 1893, ch. 81, § 10,
without change.]**

§ 100. Certificate of conviction to be delivered to medical superintendent and copy filed.—Whenever any convict shall be transferred to the Matteawan State hospital, the agent and warden or other officer in charge of the prison, penitentiary, reformatory or other penal institution from which such convict is transferred, shall cause a correct copy of the original certificate of conviction of such convict to be filed in the office of the warden or officer in charge, and shall deliver the original certificate to the medical superintendent of such hospital; and whenever any such convict shall be transferred to any penal institution from such hospital, as hereinbefore provided, the medical superintendent shall deliver to the agent and warden, or other officer in charge of such institution, such original certificate, which shall be filed in the clerk's office of the same.

**[L. 1893, ch. 81, § 11,
without change.]**

§ 101. Transfer from state hospitals to Matteawan State hospital.—The commission in lunacy may, by order in writing, transfer any insane inmate of a state hospital, committed thereto upon the order of a court of criminal jurisdiction, to the Matteawan State hospital, and the county in which the criminal charge arose or conviction or acquittal was had, shall defray all the expenses of such person while at the Matteawan State hospital and the expenses of returning him to such county.

**[L. 1893, ch. 81, § 12,
without change.]**

§ 102. Authority to recover for the support of patients.— The medical superintendent of the hospital is hereby authorized to recover for the support of any patient therein, chargeable under the law to either counties or penitentiaries, in an action to be brought, in the name of the people of the state of New York, against the county or penitentiary, for the maintenance of said patient.

[L. 1893, ch. 81, § 18, without change, except that the action to recover for the support of patients is to be brought in the name of the people. The matter contained in the present law relating to the judgment is omitted.]

§ 103. Tenure of office.— Nothing in this article shall be construed to affect the tenure of office of any of the present officers of the hospital.

[L. 1893, ch. 81, § 14, without change.]

§ 104. Communications with patients.— No person not authorized by law or by written permission from the superintendent of state prisons shall visit the Matteawan State hospital, or communicate with any patient therein without the consent of the medical superintendent; nor without such consent shall any person bring into or convey out of the Matteawan State hospital any letter or writing to or from any patient; nor shall any letter or writing be delivered to a patient, or if written by a patient, be sent from the Matteawan State hospital until the same shall have been examined and read by the medical superintendent or some other officer of the hospital duly authorized by the medical superintendent. But communications addressed by such patient to the county judge or district attorney of the county from which he was sentenced, shall be forwarded, after examination by such medical superintendent, to their destination.

[This section is new.]

ARTICLE V.

Laws Repealed; When to Take Effect.

Section 110. Laws repealed.

111. When to take effect.

Section 110. Laws repealed.— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 111. When to take effect.— This chapter shall take effect on July first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

Revised Statutes, pt. 1, ch. 20, tit. 3. All.

| Laws of— | Chapter | Sections. |
|---------------|--------------|---------------------------------------|
| 1838. | 218. | All. |
| 1874. | 446. | All, except tit. 1, §§ 21, 22, 26. |
| 1875. | 264. | All. |
| 1875. | 574. | All. |
| 1876. | 121. | All. |
| 1878. | 47. | All. |
| 1878. | 86. | All. |
| 1879. | 45. | All. |
| 1879. | 280. | All. |
| 1880. | 61. | 1. |
| 1880. | 164. | All. |
| 1881. | 49. | All. |
| 1881. | 190. | All. |
| 1883. | 193. | All. |
| 1884. | 289. | All. |
| 1884. | 515. | All. |
| 1885. | 178. | All. |
| 1885. | 462. | All. |
| 1886. | 215. | All. |
| 1886. | 318. | All. |
| 1886. | 545. | All. |
| 1887. | 343. | All. |
| 1887. | 375. | All. |

| Laws of— | Chapter. | Sections. |
|-----------|----------|----------------------|
| 1887..... | 629..... | All. |
| 1888..... | 451..... | All. |
| 1889..... | 56..... | All. |
| 1889..... | 283..... | All. |
| 1889..... | 427..... | All. |
| 1890..... | 126..... | All. |
| 1890..... | 132..... | All. |
| 1890..... | 243..... | All. |
| 1890..... | 273..... | All. |
| 1891..... | 835..... | All. |
| 1893..... | 81..... | All. |
| 1893..... | 214..... | All. |
| 1893..... | 247..... | All. |
| 1893..... | 323..... | All. |
| 1893..... | 614..... | All. |
| 1894..... | 707..... | All. |
| 1895..... | 172..... | All. |
| 1895..... | 628..... | All, except §§ 2, 3. |
| 1895..... | 855..... | All. |

**TABLE SHOWING THE DISPOSITION OF LAWS HEREBY
REPEALED.**

Revised Statutes, pt. I, ch. 20, tit. III,
 §§ 1-8, p. 2154..... Revision, § 68.
 Revised Statutes, pt. I, ch. 20, tit. III,
 §§ 9-14, p. 2154..... Obsolete.

| Laws. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|---------------------------|-----------------|-----------------|-------------------------------|--|
| 1838, ch. 218..... | | All... | 2153.. | Amends pt. I, ch. 20, tit. III, § 4. |
| 1874, ch. 446, tit. I.... | | 1-3.... | 2155.. | Revision, §§ 60, 61. |
| 1874, ch. 446, tit. I.... | | 4..... | 2156.. | Revision, § 70. |
| 1874, ch. 446, tit. I.... | | 5'..... | 2156.. | Revision, § 62. |
| 1874, ch. 446, tit. I.... | | 6-9.... | 2156.. | Revision, § 68. |
| 1874, ch. 446, tit. I.... | | 10.... | 2157.. | Penal Code, § 377. |
| 1874, ch. 446, tit. I.... | | 11.... | 2157.. | Revision, § 63. |
| 1874, ch. 446, tit. I.... | | 12.... | 2157.. | Revision, § 66. |
| 1874, ch. 446, tit. I.... | | 14-16.. | 2157.. | Superseded by L. 1890, ch. 126, §§ 7, 11. See revision, § 65, and re- vision, § 2, for defini- tion of "indigent in- sane." |
| 1874, ch. 446, tit. I.... | | 17.... | 2158.. | Obsolete; but see Rev., § 69. |
| 1874, ch. 446, tit. I.... | | 18-19.. | 2158.. | Not re-enacted. |
| 1874, ch. 446, tit. I.... | | 20.... | 2159.. | Code Crim. Pro., § 958. |
| 1874, ch. 446, tit. I.... | | 21.... | 2159.. | Not to be repealed. |
| 1874, ch. 446, tit. I.... | | 22.... | 2159.. | Not to be repealed. |
| 1874, ch. 446, tit. 1.... | | 23-25.. | 2159.. | Superseded by L. 1893, ch. 81. |
| 1874, ch. 446, tit. I.... | | 26.... | 2160.. | Not to be repealed. |
| 1874, ch. 446, tit. I.... | | 27.... | 2160.. | Not to be re-enacted. |
| 1874, ch. 446, tit. I.... | | 28.... | 2160.. | Code Crim Pro., § 454. |
| 1874, ch. 446, tit. I.... | | 29.... | 2161.. | Obsolete, because of L. 1890, ch. 126. |

| Laws. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|--|----------|---------------------------------|-----------------------|---|
| 1874, ch. 446, tit. I.... | | 30.... | 2161.. | Code Crim. Pro., §§ 336, 454, 658. |
| 1874, ch. 446, tit. I.... | | 31.... | 2161.. | Code Crim. Pro., § 454. |
| 1874, ch. 446, tit. I.... | | 32.... | 2161.. | Revision, §§ 101, 102. |
| 1874, ch. 446, tit. I.... | | 33.... | 2161.. | Code Crim. Pro., § 661. |
| 1874, ch. 446, tit. I.... | | 34.... | 2162.. | Superseded by L. 1890, ch. 126. |
| 1874, ch. 446, tit. I, § 35, as amended by L. 1895, ch. 855..... | | | 2162.. | Revision, § 35, sub. 6. |
| 1874, ch. 446, tit. I.... | | 36.... | 2162.. | Code Civ. Pro. § 1030, sub. 2; Military Code, § 2. |
| 1874, ch. 446, tit. I.... | | 37.... | 2162.. | Revision, § 68. |
| 1874, ch. 446, tit. II.. | | (Repealed by L. 1890, ch. 245.) | | |
| 1874, ch. 446, tit. III.. | | 1.... | 2162.. | Revision, §§ 31, 32. |
| 1874, ch. 446, tit. III.. | | 2.... | 2163.. | Revision, § 33. |
| 1874, ch. 446, tit. III.. | | 3.... | 2163.. | Revision, §§ 34, 35. |
| 1874, ch. 446, tit. III.. | | 4.... | 2163.. | Revision, § 16. |
| 1874, ch. 446, tit. III.. | | 5.... | 2163.. | Superseded by L. 1895, ch. 693. |
| 1874, ch. 446, tit. III.. | | 6.... | 2163.. | Superseded by L. 1893, ch. 214. |
| 1874, ch. 446, tit. III.. | | 7.... | 2163.. | Revision, § 33. |
| 1874, ch. 446, tit. III.. | | 8.... | 2163.. | Revision, § 45. |
| 1874, ch. 446, tit. III.. | | 9.... | 2163.. | Revision, § 33, sub. 2. |
| 1874, ch. 446, tit. III.. | | 10.... | 2163.. | Revision, § 35. |
| 1874, ch. 446, tit. III.. | | 11.... | 2164.. | Code Civ. Pro., § 1030, sub. 2; Military Code, § 2. |
| 1874, ch. 446, tit. III.. | | 12.... | 2164.. | Revision, § 33, sub. 4. |
| 1874, ch. 446, tit. III.. | | 13.... | 2164.. | Revision, § 33, subs. 3-6. |
| 1874, ch. 446, tit. III.. | | 14.... | 2164.. | Revision, § 33. |
| 1874, ch. 446, tit. III.. | | 15.... | 2165.. | Revision, § 40. |
| 1874, ch. 446, tit. III.. | | 16.... | 2165.. | Revision, §§ 42, 69. |

| Laws. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|---|----------|----------|-----------------------|--|
| 1874, ch. 446, tit. III.. | | 17.... | 2165.. | Partly obsolete; see L. 1890, ch. 126, and revision, § 42. |
| 1874, ch. 446, tit. III.. | | 18.... | 2165.. | Superseded in part by L. 1893, ch. 214, and see Revision, § 43. |
| 1874, ch. 446, tit. III.. | | 19.... | 2166.. | Obsolete. |
| 1874, ch. 446, tit. III.. | | 20.... | 2166.. | Revision, § 70. |
| 1874, ch. 446, tit. III.. | | 21.... | 2166.. | Not to be re-enacted. |
| 1874, ch. 446, tit. III.. | | 22.... | 2166.. | Revision, § 69. |
| 1874, ch. 446, tit. III.. | | 23.... | 2166.. | Revision, § 67. |
| 1874, ch. 446, tit. III, § 24, as amended by L. 1895, ch. 172.... | | | 2166.. | Revision, § 74. |
| 1874, ch. 446, tit. III.. | | 25.... | 2166.. | Revision, §§ 74, 99. |
| 1874, ch. 446, tit. III.. | | 26.... | 2166.. | Revision, § 74. |
| 1874, ch. 446, tit. III.. | | 27.... | 2167.. | Revision, § 33. |
| 1874, ch. 446, tit. III.. | | 28.... | 2167.. | Superseded by L. 1893, ch. 214, § 4. |
| 1874, ch. 446, tit. III.. | | 29.... | 2167.. | Superseded by L. 1890, ch. 126. |
| 1874, ch. 446, tit. III.. | | 30.... | 2167.. | Part superseded by L. 1890, ch. 126, and see revision, § 66. |
| 1874, ch. 446, tit. III.. | | 31-33.. | 2167.. | Superseded by L. 1890, ch. 126. |
| 1874, ch. 446, tit. III.. | | 34-36.. | 2168.. | Obsolete. Not to be re-enacted. |
| 1874, ch. 446, tit. III.. | | 37.... | 2168.. | Revision, § 2, in part, See Stat. Const.. L. (1892, ch. 677), §§ 7, 8, 14. |
| 1874, ch. 446, tit. IV.. | | 1..... | 2168.. | Revision, §§ 30, 31. |
| 1874, ch. 446, tit. IV.. | | 2..... | 2168.. | Revision, § 31. |
| 1874, ch. 446, tit. IV.. | | 3..... | 2169.. | Revision, § 33. |

| Laws. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|--------------------------|-----------------|-----------------|-------------------------------|--|
| 1874, ch. 446, tit. IV.. | | 4..... | 2169.. | Revision, §§ 35, 40. |
| 1874, ch. 446, tit. IV.. | | 5..... | 2169.. | Revision, § 67. |
| 1874, ch. 446, tit. IV.. | | 5, 7... | 2169.. | Superseded by L. 1890, ch. 126. |
| 1874, ch. 446, tit. IV.. | | 8..... | 2169.. | Revision, § 33. |
| 1874, ch. 446, tit. IV.. | | 9..... | 2169.. | Superseded by L. 1893, ch. 214; Revision, § 41. |
| 1874, ch. 446, tit. IV.. | | 10.... | 2170.. | Not to be re-enacted. |
| 1874, ch. 446, tit. V... | | 1..... | 2170.. | Revision, §§ 30-32. |
| 1874, ch. 446, tit. V... | | 2..... | 2170.. | Revision, § 33. |
| 1874, ch. 446, tit. V... | | 3..... | 2170.. | Revision, § 34. |
| 1874, ch. 446, tit. V... | | 4..... | 2170.. | Superseded by L. 1895, ch. 693; Revision, § 38. |
| 1874, ch. 446, tit. V... | | 5..... | 2170.. | Obsolete. Temporary. |
| 1874, ch. 446, tit. V... | | 6..... | 2171.. | Superseded by L. 1890, ch. 126, § 1. |
| 1874, ch. 446, tit. V... | | 7-9.... | 2171.. | Obsolete. Temporary. |
| 1874, ch. 446, tit. VI.. | | 1..... | 2171.. | Revision, § 30-32. |
| 1874, ch. 446, tit. VI.. | | 2..... | 2171.. | Revision, § 32. |
| 1874, ch. 446, tit. VI.. | | 3..... | 2171.. | Revision, § 33. |
| 1874, ch. 446, tit. VI.. | | 4..... | 2171.. | Revision, § 34. |
| 1874, ch. 446, tit. VI.. | | 5..... | 2172.. | Revision, § 38, super- seded L. 1895, ch. 693. |
| 1874, ch. 446, tit. VI.. | | 6-9.... | 2172.. | Temporary and ob- solete. |
| 1874, ch. 446, tit. VII. | | 1..... | 2172.. | Revision, §§ 30-32. |
| 1874, ch. 446, tit. VII. | | 2-3.... | 2172.. | Revision, § 33. |
| 1874, ch. 446, tit. VII. | | 4..... | 2173.. | Revision, § 32. |
| 1874, ch. 446, tit. VII. | | 5, 6... | 2173.. | Revision, § 33. |
| 1874, ch. 446, tit. VII. | | 7..... | 2173.. | Superseded in part by L. 1893, ch. 214; Revi- sion, §§ 34, 38. |
| 1874, ch. 446, tit. VII. | | 8..... | 2173.. | Obsolete. Superseded by L. 1890, ch. 126. |

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| 1874, ch. 446, tit. VII. | | 9..... | 2173.. | Superseded by L. 1893, ch. 214. |
| 1874, ch. 446, tit. VII. | | 10.... | 2173.. | Revision, § 34. |
| 1874, ch. 446, tit. VIII | | (Repealed by L. 1884, ch. 289.) | | |
| 1874, ch. 446, tit. IX.. | | 1-2.... | 2173.. | Revision, § 47. |
| 1874, ch. 446, tit. X... | | 1-5.... | 2174.. | Superseded L. 1890, ch. 273. |
| 1874, ch. 446, tit. XI.. | | 1-2.... | 2175.. | Obsolete. |
| 1875, ch. 264..... | | All... | 2176.. | Temporary. Now obsolete. |
| 1875, ch. 574..... | | All... | 2158.. | Amends L. 1874, ch. 446, tit. I, §§ 18, 22, 25, 31, 33; tit. III, §§ 8, 17; tit. IV, § 10; tit. X, § 2. |
| 1876, ch. 121..... | | All... | 2174.. | Revision, § 32. |
| 1878, ch. 47..... | | All... | 2177.. | Superseded by L. 1890, ch. 273. |
| 1878, ch. 86..... | | All... | 2177.. | Revision, §§ 35, 38. Superseded by L. 1895, ch. 693. |
| 1879, ch. 45..... | | All... | 2178.. | Revision, § 33. |
| 1879, ch. 280..... | | 1..... | 2178.. | Partly obsolete, and Revision, §§ 30-32. |
| 1879, ch. 280..... | | 2-6.... | 2178.. | Temporary, obsolete. |
| 1879, ch. 280..... | | 7..... | 2179.. | Revision, § 33. |
| 1879, ch. 280..... | | 8..... | 2180.. | Revision, § 34. |
| 1879, ch. 280..... | | 9..... | 2180.. | Superseded by L. 1893, ch. 214, and L. 1895, ch. 693. |
| 1879, ch. 280..... | | 10.... | 2180.. | Revision, § 45. |
| 1879, ch. 280..... | | 11.... | 2180.. | Revision, § 33, sub. 2. |
| 1879, ch. 280..... | | 12.... | 2180.. | Revision, § 35. |
| 1879, ch. 280..... | | 13.... | 2181.. | Revision, § 40, to conform with L. 1893, ch. 214. |

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| 1879, ch. 280..... | | 14.... | 2181.. | Revision, § 43. |
| 1879, ch. 280..... | | 15.... | 2181.. | Code Civ. Pro., § 1030, sub. 2; Military Code, § 2; Highway L., 33. |
| 1879, ch. 280..... | | 16.... | 2182.. | Revision, § 33, sub. 4. |
| 1879, ch. 280..... | | 17.... | 2182.. | Revision, § 33, subs. 3-6. |
| 1879, ch. 280..... | | 18.... | 2182.. | Revision, § 33. |
| 1879, ch. 280..... | | 19.... | 2182.. | Revision, § 44. |
| 1879, ch. 280..... | | 20.... | 2182.. | Superseded by L. 1890, ch. 126. |
| 1879, ch. 280..... | | 21.... | 2182.. | Revision, § 74. |
| 1879, ch. 280..... | | 22-24.. | 2183.. | Superseded by L. 1890, ch. 126. |
| 1879, ch. 280..... | | 25.... | 2183.. | Revision, § 67. |
| 1879, ch. 280..... | | 26.... | 2183.. | Superseded by L. 1890, ch. 126. |
| 1879, ch. 280..... | | 27.... | 2183.. | Not to be re-enacted. Useless. |
| 1880, ch. 61..... | | 1..... | 2183.. | Revision, § 31. |
| 1880, ch. 164..... | | All... | 2157.. | Amend L. 1874, ch. 446, tit. I, §§ 14, 15. |
| 1881, ch. 49..... | | All... | 2185.. | Superseded by N. Y. Cons. Act, § 396. |
| 1881, ch. 190..... | | 1..... | 2185.. | Revision, § 35. |
| 1881, ch. 190..... | | 2..... | 2185.. | Revision L., § 74. |
| 1883, ch. 193..... | | All... | 2156.. | Amends L. 1874, ch. 446, tit. I, § 6. |
| 1884, ch. 289..... | | (Repealed by L. 1893, ch. 81.) | | |
| 1884, ch. 515..... | | All... | 2159.. | Amends L. 1874, ch. 446, tit. I, §§ 23, 33. |
| 1885, ch. 178..... | | All... | 2185.. | Revision, § 74. |
| 1885, ch. 462..... | | All... | 2189.. | Temporary, not to be re-enacted. |
| 1886, ch. 215..... | | All... | 2184.. | Revision, § 35. |

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| 1886, ch. 318..... | | All... | 2186.. | Temporary, not to be re-enacted. |
| 1886, ch. 545..... | | All... | 2189.. | Amends L. 1885, ch. 462, § 1. |
| 1887, ch. 343..... | | All... | 2189.. | Revision, §§ 93, 94. |
| 1887, ch. 375..... | | 1..... | 2189.. | Revision, §§ 30-32. |
| 1887, ch. 375..... | | 2..... | 2190.. | Revision, § 33. |
| 1887, ch. 375..... | | 3..... | 2190.. | Revision, §§ 34, 35. |
| 1887, ch. 375..... | | 4..... | 2191.. | Revision, § 35. |
| 1887, ch. 375..... | | 5..... | 2191.. | Revision, § 33. |
| 1887, ch. 375..... | | 6..... | 2191.. | Revision, § 40, with changes made necessary by L. 1893, ch. 214. |
| 1887, ch. 375..... | | 7..... | 2192.. | Superseded in part by L. 1890, ch. 126, and see Revision, § 69. |
| 1887, ch. 375..... | | 8..... | 2192.. | Revision, §§ 40, 42. |
| 1887, ch. 375..... | | 9..... | 2192.. | Revision, § 43; superseded in part by L. 1893, ch. 214. |
| 1887, ch. 375..... | | 10.... | 2192.. | Revision, § 70. |
| 1887, ch. 375..... | | 11.... | 2192.. | Not re-enacted. Unnecessary. |
| 1887, ch. 375..... | | 12.... | 2193.. | Revision, § 69. |
| 1887, ch. 375..... | | 13.... | 2193.. | Superseded in part by L. 1893, ch. 214. See Revision, § 44. |
| 1887, ch. 375..... | | 14.... | 2193.. | Superseded by L. 1890, ch. 126. |
| 1887, ch. 375..... | | 15.... | 2193.. | Revision, § 66; part superseded by L. 1890, ch. 126. |
| 1887, ch. 375..... | | 16, 18. | 2193.. | Superseded by L. 1890, ch. 126. |

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| 1887, ch. 375..... | | 19..... | 2193.. | Superseded by L. 1895, ch. 693; Revision, § 38. |
| 1887, ch. 375..... | | 20..... | 2194.. | Temporary. See L. 1894, ch. 358. |
| 1887, ch. 375..... | | 21..... | 2194.. | Revision, § 44. Penal Code, § 473. |
| 1887, ch. 375..... | | 22-25.. | 2194.. | Temporary, not to be re-enacted.. |
| 1887, ch. 629..... | | All... | 2170.. | Amends L. 1874, ch. 446, tit. V, § 4. |
| 1881, ch. 451..... | | All... | 2146.. | Revision, 77. |
| 1889, ch. 56..... | | All... | 3303.. | Amends L. 1874, ch. 446, tit. III, § 37. |
| 1889, ch. 283..... | | All... | (Amended by L. 1890, ch. 273, which see.) | |
| 1889, ch. 427..... | | All... | 3304.. | Amends L. 1879, ch. 280, §§ 1, 2, 5, 6, 8, 9, 20, 21, 26. |
| 1890, ch. 126..... | | 1..... | 3417.. | Revision, § 10. |
| 1890, ch. 126..... | | 2..... | 3417.. | Revision, § 11. |
| 1890, ch. 126..... | | 3-5.... | 3418.. | Temporary. Not now necessary. |
| 1890, ch. 126..... | | 6..... | 3419.. | Revision, § 67. |
| 1890, ch. 126..... | | 7..... | 3419.. | Part temporary; Revision, § 65. |
| 1890, ch. 126..... | | 8..... | 3419.. | Revision, § 71. |
| 1890, ch. 126..... | | 9..... | 3420.. | Revision, §§ 67, 71. |
| 1890, ch. 126..... | | 10.... | 3420.. | Revision, §§ 9, 15. See L. 1890, ch. 273, § 18. |
| 1890, ch. 126..... | | 11.... | 3420.. | Not re-enacted. |
| 1890, ch. 126..... | | 12.... | 3421.. | Revision, §§ 9, 15. |
| 1890, ch. 126..... | | 13, 14. | 3421.. | Revision, §§ 11, 67, and partly not re-enacted. |
| 1890, ch. 126..... | | 15.... | 3421.. | Statutory Construction Law, § 7. |

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| 1890, ch. 126..... | | 16.... | 3421.. | Obsolete. |
| 1890, ch. 126..... | | 17.... | 3422.. | Revision, § 67, in part. |
| 1890, ch. 126..... | | 18.... | 3422.. | Not to be re-enacted; unnecessary. |
| 1890, ch. 126..... | | 19.... | 3422.. | Revision, § 4. |
| 1890, ch. 132..... | | 1-8.... | 3422.. | Revision, § 30. |
| 1890, ch. 243..... | | All... | 3435.. | Revision, § 35. |
| 1890, ch. 273..... | | 1-4.... | 3436.. | Revision, § 3. |
| 1890, ch. 273..... | | 5.... | 3437.. | Public Off. L., §§ 10, 28. |
| 1890, ch. 273..... | | 6.... | 3437.. | Revision, §§ 4, 5. |
| 1890, ch. 273..... | | 7.... | 3437.. | Revision, §§ 12, 13. Part omitted. |
| 1890, ch. 273..... | | 8.... | 3437.. | Revision, § 13. |
| 1890, ch. 273..... | | 9.... | 3438.. | Revision, § 14. |
| 1890, ch. 273..... | | 10.... | 3438.. | Revision, § 6. |
| 1890, ch. 273..... | | 11.... | 3438.. | Revision, § 7. |
| 1890, ch. 273..... | | 12.... | 3439.. | Revision, § 47. |
| 1890, ch. 273..... | | 13.... | 3439.. | Revision, § 72. |
| 1890, ch. 273..... | | 14.... | 3440.. | Revision, § 5, Code Civ. Pro., §§ 843, 933. |
| 1890, ch. 273..... | | 15.... | 3440.. | Revision, § 48. |
| 1890, ch. 273..... | | 16.... | 3440.. | Revision, § 35, sub. 3. |
| 1890, ch. 273..... | | 17.... | 3440.. | Revision, § 33. |
| 1890, ch. 273..... | | 18.... | 3440.. | Revision, § 9. |
| 1890, ch. 273..... | | 19.... | 3441.. | Revision, § 8. |
| 1890, ch. 273..... | | 20, 21. | 3441.. | Now unnecessary. |
| 1890, ch. 273..... | | 21.... | 3441.. | Obsolete. |
| 1890, ch. 273..... | | 22.... | 3441.. | Revision, § 2. |
| 1891, ch. 335..... | | 1.... | 3511.. | Revision, § 30. |
| 1891, ch. 335..... | | 2.... | 3511.. | Temporary, not to be re-enacted. |
| 1891, ch. 335..... | | 3.... | 3511.. | Revision, §§ 31, 32. |
| 1891, ch. 335..... | | 4.... | 3511.. | Revision, § 33. |
| 1891, ch. 335..... | | 5.... | 3511.. | Revision, § 33, sub. 7, § 34. |

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| 1891, ch. 335..... | | 6..... | 3512.. | Revision, § 35. |
| 1891, ch. 335..... | | 7..... | 3512.. | Superseded by L. 1895, ch. 693. |
| 1891, ch. 335..... | | 8-12... | 3512.. | Temporary. Not to be re-enacted. |
| 1893, ch. 81..... | | 1-14... | ..... | Revision, §§ 90-103 re- spectively. |
| 1893, ch. 214..... | | 1..... | ..... | Temporary. |
| 1893, ch. 214..... | | 2..... | ..... | Revision, §§ 37, 39, 43. |
| 1893, ch. 214..... | | 3..... | ..... | Revision, § 40. |
| 1893, ch. 214..... | | 4..... | ..... | Revision, § 41. |
| 1893, ch. 214..... | | 5..... | ..... | Revision, § 67. |
| 1893, ch. 214..... | | 6..... | ..... | Revision, § 76. |
| 1893, ch. 214..... | | 7..... | ..... | Revision, § 69. |
| 1893, ch. 247..... | | 1..... | ..... | Amends L. 1874, ch. 446, tit. 7, § 7. |
| 1893, ch. 323..... | | 1..... | ..... | Amends L. 1890, ch. 126, § 13, in Revision, § 65. |
| 1893, ch. 614..... | | 1..... | ..... | Amends L. 1874, ch. 446, tit. V, § 4, superseded by L. 1895, ch. 693. |
| 1894, ch. 707..... | | 1..... | ..... | In Revision, § 30. |
| 1894, ch. 707..... | | 2..... | ..... | In Revision, § 31. |
| 1894, ch. 707..... | | 3..... | ..... | In Revision, § 33. |
| 1894, ch. 707..... | | 4..... | ..... | In Revision, §§ 34, 35, and partly superseded by L. 1895, ch. 693. |
| 1894, ch. 707..... | | 5..... | ..... | In Revision, § 35. |
| 1894, ch. 707..... | | 6..... | ..... | In Revision, § 39. |
| 1894, ch. 707..... | | 7..... | ..... | In Revision, § 40. |
| 1894, ch. 707..... | | 8..... | ..... | In Revision, § 42. |
| 1894, ch. 707..... | | 9..... | | In Revision, § 43. |
| 1894, ch. 707..... | | 10.... | | In Revision, § 44. |
| 1894, ch. 707..... | | 11.... | | In Revision, § 45. |

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| 1894, ch. 707..... | | 12, 13. | | Temporary. Not to be re-enacted. |
| 1895, ch. 172..... | | | | Amends L. 1874, ch. 446, tit. III, § 24. |
| 1895, ch. 628..... | | 1..... | ..... | Revision, § 30. |
| 1895, ch. 628..... | | 2, 3... | ..... | Not to be repealed. |
| 1895, ch. 628..... | | 4..... | ..... | Revision, §§ 31, 32. |
| 1895, ch. 628..... | | 5..... | ..... | Revision, § 33. |
| 1895, ch. 628..... | | 6..... | ..... | Revision, §§ 34, 36. |
| 1895, ch. 628..... | | 7..... | ..... | Revision, § 33. |
| 1895, ch. 628..... | | 8..... | ..... | Revision, §§ 35, 36. |
| 1895, ch. 628..... | | 9..... | ..... | Superseded by L. 1895, ch. 693. |
| 1895, ch. 628..... | | 10..... | ..... | Temporary. |
| 1895, ch. 628..... | | 11..... | ..... | Revision, § 39. |
| 1895, ch. 693..... | | 1..... | ..... | Revision, §§ 38, 39, 44, 69. |
| 1895, ch. 855..... | | 1..... | ..... | Amends L. 1874, ch. 446, tit. I, § 35. |

THE DOMESTIC COMMERCE LAW.

THE DOMESTIC COMMERCE LAW.

[This bill became ch. 376 of the Laws of 1896.]

REVISERS' PRELIMINARY NOTE TO THE DOMESTIC COMMERCE LAW.

The bill reported herewith, and entitled the Domestic Commerce Law, is a revision of a considerable number of statutes prescribing regulations of trade and commerce which have been regarded by the Legislature as desirable, mainly on the ground of convenience, and usually distinguishable in general character from the class of statutes respecting the public health, which have found place in the Public Health Law, and from those of a highly penal nature, now generally incorporated into the Penal Code.

Most of the statutes which are to be repealed if this bill passes are found in the eighth edition of the Revised Statutes, at pp. 1408-40, 1455-1457, 1458-61.

The uncertainty which long enveloped the status of auctioneers in those parts of the State where there were no local statutes on the subject has been in great measure dispelled by the decision of the Court of Appeals in *People v. Wilmerding*, 136 N. Y. 363, and the article on that subject has been drawn in attempted accordance with that decision. The opinion of the court in that case is in itself sufficient evidence of the necessity of statutory revision. The note appended to article III contains an explanation of the situation and repetition here is deemed unnecessary.

In fact, it may well be questioned whether all the provisions on this subject, as well as those of article IV relating to peddlers, have not outlived their usefulness, and may not properly be repealed without re-enactment. The revenues derived by the

State from these sources are comparatively trifling — nothing can now be collected from auctioneers, and the charters of many, if not all cities and villages, contain adequate provisions for the regulation of such kinds of business. The commission, however, merely suggest the matter for legislative consideration, and do not feel at liberty to omit these laws from their draft of the revision.

The departures from existing law to be found in the bill are believed to be wholly unimportant, with the exception of the provisions of section 8, which has been drawn to conform to the report of the commissioners appointed to secure uniformity of legislation.

Cross reference and notes explaining the principal changes in language and all changes in substance are appended to the several sections of the proposed revision.

Respectfully submitted.

CHARLES Z. LINCOLN.

WM. H. JOHNSON.

A. JUDD NORTHRUP.

Dated, *February* 4, 1896.

THE DOMESTIC COMMERCE LAW.

AN ACT relating to domestic commerce law, constituting chapter thirty-four of the general laws.

Became a law April 23, 1896, with the approval of the Governor. Passed, a majority being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XXXIV OF THE GENERAL LAWS.

- Article**
- I. Weights and measures. (§§ 1-17.)
 - II. Regulations of trade and business. (§§ 20-40.)
 - III. Auctions and auctioneers. (§§ 50-54.)
 - IV. Peddlers. (§§ 60-65.)
 - V. Flour and meal. (§§ 70-79.)
 - VI. Beef and pork. (§§ 90-92.)
 - VII. Hops and hay. (§§ 100-105.)
 - VIII. Laws repealed; when to take effect. (§§ 110-111.)

ARTICLE I.

Weights and Measures.

- Section**
- 1. Short title.
 - 2. Description of weights and measures.
 - 3. The unit of length and surface.
 - 4. Units of weights.
 - 5. Units of capacity.
 - 6. Heap measure.
 - 7. Measure for bran.
 - 8. Number of pounds to the bushel.
 - 9. Barrels of apples, quinces, pears and potatoes.
 - 10. Construction of contracts.
 - 11. Duties of state superintendent of weights and measures.

- Section 12. Copies of standard weights and measures.
13. County sealer; duty of supervisors.
14. Town sealer.
15. City sealer.
16. Weights and measures to be sealed; fees.
17. Delivery of standards to successor in office.

Section 1. Short title.—This chapter shall be known as the domestic commerce law.

§ 2. Description of weights and measures.—The standard weights and measures now in charge of the secretary of state, being the same that were furnished to this state by the government of the United States, in accordance with a joint resolution of congress, approved June fourteen, eighteen hundred and thirty-six, and consisting of one standard yard measure and one set of standard weights, comprising one Troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five and fifty pounds respectively; one set of standard Troy ounce weights, divided decimally from ten ounces to the one ten-thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one-half gallon, one quart, one pint and one-half pint measure; and one standard half bushel, containing one thousand and seventy-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as standard shall be the standards of weight and measure throughout this state.

[L. 1851, ch. 134, § 1; R. S., 8th ed., 2096,
without change in substance.]

§ 3. The unit of length and surface.—The unit or standard measure of length and surface, from which all other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this article, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

The rod, pole or perch, contains five and one-half yards; the mile, one thousand seven hundred and sixty yards. The chain for measuring land is twenty-two yards long and is divided into one hundred equal parts called links.

The acre for land measure shall be measured horizontally and contain ten square chains, equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

[L. 1851, ch. 134, §§ 2, 3, 4, 5; R. S., 8th ed., 2098, without change in substance.]

§ 4. Units of weight.—The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard of avoirdupois and Troy weights designated in this article. The avoirdupois pound bears to the Troy pound the ratio of seven thousand to five thousand seven hundred and sixty, and is divided into sixteen equal parts called ounces. The hundred weight consists of one hundred avoirdupois pounds and twenty hundred weight are a ton. The Troy ounce is equal to the twelfth part of a Troy pound.

[L. 1851, ch. 134, §§ 6, 7; R. S., 8th ed., 2098, without change in substance.]

§ 5. Units of capacity.—The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained shall be the standard gallon and its parts designated in this article. The barrel is equal to thirty-one and one-half gallons and two barrels are a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills.

The unit or standard measure of capacity for substance, not liquids, from which all other measures of such substances shall be derived and ascertained, is the standard half bushel mentioned in this article.

The peck, half peck, quarter peck, quart and pint measures for measuring commodities which are not liquids shall be derived from the half bushel by successively dividing that measure by two.

[L. 1829, ch. 297, §§ 1, 2, 6, 7; R. S., 8th ed., 2097,
L. 1851, ch. 134, §§ 8, 9, 10, 11; R. S., 8th ed., 2098,
without change in substance, if the act of 1829 was superseded by that of 1851, as has been assumed since the passage of the latter act.]

§ 6. Heap measure.—The measures of capacity for all commodities commonly sold by heap measure shall be the half bushel and its multiples and subdivisions. The measures used to measure such commodities shall be cylindrical, with plain and even bottom, and of the diameter of nineteen and one-half inches from outside to outside if a bushel; fifteen and one-half inches if a half bushel, and twelve and one-third inches if a peck.

All commodities sold by heap measure shall be duly heaped up in the form of a cone, the outside of the measure to be the limit of the base of the cone, and the cone to be as high as the commodities will admit.

[L. 1851, ch. 134, §§ 12, 13; R. S., 8th ed., 2099,
with the following change:

The words “for coal, ashes, marl, manure, Indian corn in the ear, fruit and roots of every kind, and ” are omitted.]

§ 7. Measure for bran.—The standard measure of capacity for bran and shorts shall be forty quarts to the bushel. The measure used for measuring such commodities shall be round, with a plain or even bottom, and it shall be thirteen and one-half inches in diameter in the clear at the top, and fifteen inches and one-half in diameter in the clear at the bottom and of sufficient depth to contain such number of quarts, when stricken with a round, straight stick or roller of uniform diameter.

[L. 1835, ch. 282; R. S., 8th ed., 2098,
without change in substance.]

§ 8. Number of pounds to the bushel.—Whenever any commodity specified in this section is sold by the bushel, and no special agreement is made by the parties as to the mode of measuring, the bushel shall consist of seventy pounds of lime or coarse salt; sixty pounds of wheat, peas, potatoes, clover-seed or beans; fifty-seven pounds of onions; fifty-six pounds of Indian corn, rye or fine salt; fifty-five pounds of flaxseed; fifty-four pounds of sweet potatoes; fifty pounds of corn meal, rye meal or carrots; forty-eight pounds of barley, apples or buckwheat; forty-five pounds of herdsgrass, timothy seed or rough rice; forty-four pounds of Sea Island cotton seed; thirty-three pounds of dried peaches; thirty-two pounds of oats; thirty pounds of upland cotton seed; twenty-five pounds dried apples; twenty pounds of bran or shorts.

[L. 1851, ch. 134, § 15; R. S., 8th ed., 2099, L. 1857, ch. 560, § 1; R. S., 8th ed., 2103, as proposed to be modified by the conference of the commissioners for the promotion of uniformity of legislation in the United States, except that the legislature changed the number of pounds in a bushel of fine salt from fifty to fifty-six pounds. See L. 1851, ch. 134, § 15; R. S., 8th ed., 2099, and L. 1857, ch. 560, § 1; R. S., 8th ed., 2103, for which this section is proposed as a substitute.]

§ 9. Barrels of apples, quinces, pears and potatoes.—A barrel of apples, pears, quinces or potatoes shall represent a quantity equal to one hundred quarts of grain or dry measure, and every person buying or selling such articles in this state, by the barrel, shall be understood as referring to the quantity specified in this section, but when potatoes are sold by weight the quantity constituting a barrel shall be one hundred and seventy-two pounds. No person shall make, or cause to be made, barrels holding less than the quantity herein specified, knowing or having reason to believe that the same are to be used for the sale of apples, quinces, pears or potatoes. No person in this state shall use barrels hereafter made for the sale of such articles

of a size less than the size specified in this section. Every person violating any provision of this section shall forfeit to the people of the state the sum of five dollars for every barrel put up, made or used in violation of such provision.

[L. 1862, ch. 178; R. S., 8th ed., 1440,

L. 1887, ch. 337,

without change in substance, except that the penalty is made to the people of the state in conformity with the present well-settled practice.]

§ 10. Construction of contracts.—All contracts made within the state for work to be done, or for the sale or delivery of personal property, by weight or measure, shall be taken and construed according to the standards of weights and measures adopted in this article.

[L. 1851, ch. 134, § 14; R. S., 8th ed., 2099,

without change in substance.]

§ 11. Duties of state superintendent of weights and measures.—The state superintendent of weights and measures shall take charge of the standards adopted by this article as the standards of the state; cause them to be kept in a fire-proof building belonging to the state, from which they shall not be removed, and take all other necessary precautions for their safe-keeping. He shall correct the standards of the several cities and counties and provide them with such standards, balances and other means of adjustment as may be necessary, and, as often as once in ten years, compare the same with those in his possession, and he shall have a general supervision of the weights and measures of the state.

[L. 1851, ch. 134, § 17; R. S., 8th ed., 2099,

without change in substance. For statute regulating appointment of state superintendent of weights and measures, see Executive Law, § 80.]

§ 12. Copies of standard weights and measures.—The state shall have a complete set of copies of the original standards of

weights and measures adopted by this article, which shall be used for adjusting county standards, and the original standards shall not be used except for the adjustment of this set of copies and for scientific purposes.

The state superintendent of weights and measures shall see that the foregoing provisions of this section are complied with and procure such apparatus and fixtures, if the same have not already been procured, as are necessary in the comparison and adjustment of the county standards.

He shall cause all the city and county standards to be impressed with the emblem of the United States, the letters "N. Y.," and such other device as he shall direct for the particular county.

[L. 1851, ch. 134, §§ 19, 25; R. S., 8th ed., 2100, without change in substance.]

§ 13. County sealer; duty of supervisors.—There shall be a county sealer of weights and measures in each county, who shall be appointed by the board of supervisors and hold office during the pleasure of such board. He shall take charge of and safely keep the county standards, provide the several towns with such standard weights, measures and balances, stamped with such devices as the board of supervisors may direct, as may be wanting, and compare the town standards with those of the county as often as once in five years. In towns where there are no standards or no town sealer, he shall perform the duties of a town sealer.

The board of supervisors of each county shall procure the proper standards for each town therein not provided therewith, and the expense thereof shall be paid by such town.

[L. 1851, ch. 134, §§ 20, 21, 24, 25; R. S., 8th ed., 2100, without change in substance.]

§ 14. Town sealer.—There shall be a town sealer of weights and measures in each town, to be appointed by the town board and hold office during its pleasure. He shall take charge of and safely keep the town standards and see that the weights,

measures and all apparatus used in the town which are brought to him for that purpose, conform to the town standards.

[L. 1851, ch. 134, §§ 22, 23; R. S., 8th ed., 2100, with the following change: Town sealer appointed by town board. Under the present law town sealer to be appointed by supervisor and justices of the peace.]

§ 15. City sealer.—Where not otherwise provided by law, there shall be a city sealer of weights and measures to be appointed by the common council of each city, and hold office during the pleasure of said council. He shall perform in his city the duties of a town sealer in a town. Where it is provided by law that some other city officer shall perform the duties of a sealer, the provisions of this article shall apply to such officer, so far as the same are not inconsistent with the law under which he acts.

[New.]

§ 16. Weights and measures to be sealed; fees.—Whenever the sealer of a city, county or town compares weights and measures and finds that they correspond or causes them to correspond with the standards in his possession, he shall seal and mark such weights and measures with the appropriate devices.

Each sealer shall receive for his services the following fees:

For sealing and marking every beam, ten cents.

For sealing and marking measures of extension, ten cents per yard, not exceeding fifty cents for any one measure.

For sealing and marking every weight, five cents.

For sealing and marking liquid and dry measures, ten cents for each measure.

He shall have a reasonable compensation for making weights and measures conform with the standards in his possession.

[L. 1851, ch. 134, §§ 26, 27; R. S., 8th ed., 2100, without change in substance.]

§ 17. Delivery of standards to successor in office.—Whenever the state superintendent of weights and measures resigns, is

removed from office or removes from the city of Albany, or when any city, county or town sealer resigns, is removed from office or removes from the city, county or town in which he has been appointed or elected, he shall deliver to his successor in office all the standard beams, weights and measures in his possession, and on the death of any such sealer of weights and measures his representatives shall in like manner deliver to his successor in office such beams, weights and measures. In case of refusal or neglect to deliver such standards entire and complete, as in this section required, the successor in office may maintain an action against the person or persons so refusing or neglecting, and recover double the value of the standards not delivered and double costs. One-half of the damages recovered in every such action shall be retained by the person so recovering, and the other shall be applied to the purchase of such standards as may be required in his office.

[L. 1851, ch. 134, §§ 28, 29, 30, 31; R. S., 8th ed., 2101, without change in substance.]

ARTICLE II.

Regulations of Grade and Business.

Section 20. Standard of domestic distilled spirits.

21. Sperm oils.

22. Storage of petroleum.

23. Standard test and storage of refined petroleum and kerosene oil.

24. Standard and storage of illuminating oils.

25. Inspectors of storage.

26. Fire and light within one hundred and fifty feet of warehouses in the counties of New York, Kings and Queens prohibited.

27. Penalties and the enforcement thereof.

28. Trade-marks.

29. Unlawful detention of milk cans.

30. Canned and preserved food.

31. Oysters.

Section 32. Fees and charges for elevators and warehouses.

33. Analysis of commercial fertilizers to be furnished.

34. List and analysis of fertilizers to be furnished the director of the state agricultural experiment station at Geneva.

35. When statement shall not be deemed false; application of sections.

36. Inert nitrogenous matter to be stated.

37. Penalties.

38. Duties of the director of New York state agricultural experiment station relating to fertilizers.

39. Sale of agricultural products on commission.

40. Duty of hotel keepers to provide fire-escapes.

Section 20. Standard of domestic distilled spirits.—Domestic distilled spirits, at a temperature of sixty degrees Fahrenheit, which have a specific gravity of nine thousand three hundred and thirty-five as compared with the gravity of pure distilled water at the same temperature estimated at ten thousand, shall be deemed first proof.

The strength of any such spirits below or above first proof shall be calculated decimally, or by the percentage in reference to such standard, and shall be denoted as so many per centum below or above first proof, as the actual difference in strength shall be.

[R. S., pt. I, ch. 17, tit. II, § 171; R. S., 8th ed., 1427, without change in substance.]

§ 21. Sperm oils.—Pure sperm oil, at the temperature of sixty degrees Fahrenheit, shall have the same specific gravity as domestic distilled spirits of forty-eight per centum above first proof at the same temperature; and whale oil, at that temperature, shall have the same specific gravity as such spirits of eight per centum above first proof, as established by this article. The specific gravity of such oils may be tested by a hydrometer or an oleometer. The secretary of state shall furnish, at the expense of the state, to the clerk of each county, a correct oleometer,

graduated to show the difference between pure sperm oil and whale oil, which shall be kept by such clerk for public use as a standard and true test of pure sperm oils. All oils under the name of sperm, lamp, summer, fall and winter oils shall be deemed to be sold as and for pure sperm oil. All oils sold under the name of sperm, lamp, summer, fall and winter oils, which shall be adulterated from pure sperm oil, shall be deemed whale oil, and the vendor shall be liable to the purchaser for the difference in value between pure sperm and crude whale oil.

[L. 1836, ch. 475, §§ 1, 2, 3, 4; R. S., 8th ed., 1436, consolidated without change in substance.]

§ 22. Storage of petroleum.—Crude petroleum, earth or rock oil, or any of its products, shall not be kept on sale or stored in any place or building within the corporate limits of any city in this state, except in the city of New York, unless in detached and properly ventilated warehouses, the exterior walls of which are stone, brick or iron, specially adapted to that purpose, with raised sills at least two feet high, or the ground floor of which is at least two feet below the level of the street or adjoining land, so as to effectually prevent the overflow of such substances beyond the premises where kept or stored.

No part of such warehouses shall be occupied as a dwelling, and if less than fifty feet from any adjacent building, such warehouse must be separated therefrom by a brick or stone wall at least ten feet in height and sixteen inches thick.

None of such articles shall be allowed to remain on the sidewalk beyond the front line of any building or in the street, a longer time than is actually necessary for the storage, shipment or delivery of the same, nor after sunset.

[L. 1865, ch. 773, §§ 1, 2, 4; R. S., 8th ed., 1433, without change in substance. New York city is excepted from the provisions of this section because provided for by § 457 of Consolidation Act.]

§ 23. Standard test and storage of refined petroleum and kerosene oil.— Refined petroleum or kerosene oil shall not be kept on sale or stored in any such city, the fire test of which shall be less than one hundred and ten degrees Fahrenheit, determined by authorized inspectors using G. Tagliabue's or other improved instruments; and the barrels or packages containing the same shall be legibly stamped or marked with the inspector's official stamp or mark. If stored above the cellar or basement of any building and in barrels of not over forty-five gallons each, or in metallic vessels or tanks for the convenience of retailing, the quantity so stored shall not exceed the contents of ten barrels, unless packed in hermetically sealed metallic packages when such quantity shall not exceed one hundred barrels. If stored in cellars or basements surrounded by walls of brick or stone, and at least two feet below the level of the sidewalk, street or adjacent land, such quantity shall not exceed the contents of one hundred and fifty barrels, unless stored in warehouses specially adapted for the purpose pursuant to this article. No more than five barrels thereof shall be kept or stored in any building occupied wholly or in part as a dwelling.

Not more than ten barrels of benzine or naphtha shall be kept or stored in any building, and not more than three barrels thereof in any building any part of which is occupied as a dwelling.

This and the preceding section shall not prevent the storage of crude or refined petroleum in wrought-iron tanks detached from any building and specially adapted for that purpose, or in other tanks so constructed that the top is at least two feet below the street or the adjoining land and covered with at least one foot of earth, and appurtenant to or connected with a refinery, with the approval of the inspectors of buildings, fire marshal or other proper authorities.

[L. 1865, ch. 775, § 3; R. S., 8th ed., 1433,
L. 1866, ch. 872,
without change in substance.]

§ 24. Standard and storage of illuminating oils.—No person shall manufacture or have in his possession or sell or give away for illuminating or heating purposes in lamps or stoves within this state, any oil or burning fluid wholly or partly composed of naphtha, coal oil, petroleum or products thereof, or of other substances or materials emitting an inflammable vapor which will flash at a temperature below one hundred degrees Fahrenheit, according to the instruments and tests approved by the state board of health.

No such oil or fluid which will ignite at a temperature below three hundred degrees Fahrenheit shall be burned or be carried as freight in any passenger or baggage car or passenger boat moved by steam or electric power in this state, or in any stage or street car, however propelled, except that coal oil, petroleum and its products may be carried, when securely packed in barrels or metallic packages, in passenger boats propelled by steam when there are no other public means of transportation.

The state board of health shall prescribe the tests and instruments by which such oils and fluids shall be tested, and shall adopt such measures to enforce the provisions of this section and such rules and regulations for collecting, examining and testing samples of such oils and fluids as to them may seem necessary. The public analysts employed by or under the direction of such board shall test the samples of such oils and fluids as may be submitted to them under the rules of the board, for which they shall receive such reasonable compensation as the board may allow.

Naphtha and other illuminating products of petroleum which will not stand the flash test required by this section, may be used for illuminating or heating purposes only in the following cases:

1. In street lamps or open air receptacles apart from any building, factory or inhabited house in which the vapor is burned.
2. In dwellings, factories or other places of business when vaporized in secure tanks or metallic generators made for that purpose, in which the vapor so generated is used for lighting or heating.

3. For use in the manufacture of illuminating gas in gas manufacturing factories situated apart from dwellings and other buildings.

Any person violating any provision of this section shall forfeit to the city or village, or if not in a city or village to the town in which the violation occurs, the sum of one hundred dollars for every such violation, and for every day and part of day that such violation occurs.

This section shall not apply to the city of New York, and shall not supersede but shall be in addition to the ordinances or regulations of any city or village made pursuant to law for the inspection or control of combustible materials therein.

[L. 1882, ch. 292, all; R. S., 8th ed., 1435, without change in substance, except that the provision making the violation of this section a misdemeanor is changed by imposing a penalty of one hundred dollars for every such violation, payable to the city, village or town in which the violation occurs.]

§ 25. Inspectors of storage.—The inspectors of buildings or other proper authorities in every such city shall make an examination of all the premises where any of the articles or substances specified in the preceding sections of this article are kept or stored, and report any violation thereof to the authorities of the city whose duty it is to enforce the provisions thereof.

[L. 1865, ch. 773, § 5; R. S., 8th ed., 1433, without change in substance.]

§ 26. Fire and light within one hundred and fifty feet of warehouses in the counties of New York, Kings and Queens prohibited.—No person shall bring, have, keep or use or suffer or permit to be brought, kept, had or used on board of any ship, vessel, canal boat, barge, lighter, boat or other craft lying at or within the distance of one hundred and fifty feet of any warehouse, yard, shed, dock, pier, bulkhead, wharf or other place within the counties of New York, Kings or Queens at, in or upon which petroleum oil or any of its products is stored or is kept for ex-

port or in quantities exceeding ten thousand gallons, or at, in or upon any such warehouse, shed, yard, dock, pier, bulkhead or other place, any lighted match or lighted cigar, cigarette or pipe, or any fire or light of any kind, except in strict conformity to the written permission of the owner, lessee or superintendent of such warehouse, yard, shed, dock, pier, bulkhead, wharf or other place, specifying the fire or light to be kept, had or used, the particular purpose for and the place or spot at which the same may be so kept, had or used and the particular manner of keeping, having and using the same.

This section shall not apply to steam tugs while transacting their ordinary business nor to steam fire engines engaged in extinguishing fires.

[L. 1879, ch. 324, all; R. S., 8th ed., 1435, re-enacted without change in substance, except omission of penalty for violation, which is provided for in § 27 of revision.]

§ 27. Penalties and the enforcement thereof.—Every person violating the provisions of this article, relating to the test for refined petroleum and oil, shall forfeit to the people of the state the sum of five hundred dollars for each violation.

Every person violating any provision of this article, relating to the storage or keeping for sale of any article, substance or product herein specified, shall forfeit to the people of the state, the sum of two hundred and fifty dollars for each day and part of a day that such violation continues.

Every person violating any provisions of this article, relating to the encumbering of any sidewalk or street shall forfeit the sum of twenty-five dollars for each day and part of a day that such violation continues, to be paid, if in a city or village, to such city or village, and elsewhere, to the town in which such violation occurs.

The mayor and common council of every city or other proper authorities thereof, shall, by ordinance or resolution, provide for the proper enforcement of the provisions of the preceding sec-

tions of this article, and in every such city, the moneys collected by the city as penalties for the violation of any such ordinance or resolution or of any of such provisions, shall be applied to the support of the poor therein, except in Brooklyn, where they shall be paid into the widows and orphans' fund of the fire department, and except in Buffalo, where they shall be paid to the treasurer of the firemen's benevolent association of the city for its use and benefit.

[L. 1865, ch. 773, §§ 6, 7; R. S., 8th ed., 1434,

L. 1866, ch. 872,

without change in substance, except the penalty for offense against fire test (minimum being omitted) and for offense against storage or keeping for sale, is forfeited to the people of the state; for encumbering sidewalk or street is payable to city, village or town where offense is committed. Except also that fines in New York, made payable to widows and orphans' fund of fire department are devoted to the poor.]

§ 28. Trade marks.—Any person engaged in manufacturing bottling, or selling any beverage, medicine, perfumery or mixture in this state, put up by him for sale in any vessel or receptacle, with his name or other private mark branded, stamped or marked thereupon, may file in the office of the secretary of state and in the office of the county clerk of the county where the same is manufactured, bottled, or put up for selling, a description of the name or other private mark so branded, stamped or marked thereupon, and publish the same once a week for at least three weeks successively in a newspaper published in said county, except in New York, and Kings, where such publication shall be for the same length of time daily in two newspapers therein, and he shall thereupon be deemed the proprietor of such name or mark, and of every vessel or receptacle upon which it may be branded, stamped or placed. No person, other than such proprietor, shall fill for any purpose, any such vessel or receptacle so branded, stamped or marked or from which any such brand, stamp, mark, name or other device has been removed, defaced or obliterated, nor remove,

deface or obliterate the same or place other brands, stamps, marks, names or devices upon any such vessel or receptacle without the written permission of such proprietor, or unless there has been a sale to such person of such vessel or receptacle exclusive of the contents thereof by such proprietor.

No person other than such proprietor shall, without his permission use, traffic in, purchase, sell, dispose of, convert, mutilate, destroy or willfully or unreasonably refuse to return or deliver to such proprietor on demand, any such vessel or receptacle so branded, stamped or marked belonging to such proprietor.

Any person violating any provision of this section shall forfeit to such proprietor one hundred dollars for each such violation.

Possession of any such vessel or receptacle without the consent of the proprietor of the trade-mark thereupon, shall be presumptive evidence of such violation.

[L. 1864, ch. 276; R. S., 8th ed., 1437,

L. 1887, ch. 377; R. S., 8th ed., 1438,

L. 1888, ch. 181,

consolidated without change in substance, except that the penalty of imprisonment is omitted, and a varying fine divided between the poor of locality and officer making arrest is changed to a penalty of one hundred dollars for every offense, payable to proprietor. The right to search warrant omitted, being covered by Penal Code, § 371. For further penal provisions see Penal Code, §§ 364, 364a, 364b, 365, 370.]

§ 29. Unlawful detention of milk cans.—No person shall, without the consent of the owner or shipper, or his agent, use, sell, dispose of, buy or traffic in any can, belonging to any dealer in or shipper of milk or cream in this state, or which may be shipped to any town, village or city in the state, which can has the name or initials of such owner, dealer or shipper stamped, marked or fastened thereupon, or willfully mar, erase, or change by re-marking or otherwise, such name or initials.

If any person, without the consent of such owner, dealer or shipper, or his agent, uses, sells, disposes of, buys, traffics in or has in his possession or under his control any such can, it shall be presumptive evidence that such use, sale, disposal, purchase, traffic or possession is unlawful.

Any such owner, dealer or shipper or his agent may take possession of any can used in violation of this section whenever found, and if filled or partly filled with milk or cream, and the person in whose possession it is found does not, when requested, immediately empty the same, such owner, dealer or shipper, or his agent, may empty the same into the street or elsewhere, and shall not be liable for damages for any act done pursuant to the provisions of this section.

A person violating any provision of this section shall forfeit to such owner or dealer or shipper or his agent the sum of fifty dollars for every such violation, and an action may be brought therefor in the name of any such agent without joining the real party in interest that he represents, and in any such action brought for any such violation different persons may be joined as plaintiffs, whether jointly or severally interested therein, and different persons may be joined as defendants therein, who have severally violated any such provision, and a recovery may be had in favor of one or more of such plaintiffs against one or more of such defendants.

Such action may be brought in a court of record having jurisdiction thereof, and the place of trial thereof may be laid in the county where such owner, dealer or shipper resides at the time of the commencement thereof, and if laid in such county it shall not be changed for any cause or it may be brought in a justice's court or other court not of record having similar jurisdiction in the city or county where a violation of this section is committed; the district courts of the city of New York, shall have jurisdiction of such an action irrespective of the residence of any party or the location of the subject-matter.

If at the time of the issue of the summons in a court not of record, the plaintiff or his agent make affidavit that he has reason

to believe and does believe that any defendant has any such can or cans secreted upon his premises, the justice or other magistrate or court issuing the summons must, without requiring an undertaking, grant an order for the arrest of the defendant, which order shall also contain a direction to the officer to whom the same is issued, to immediately search the place or premises mentioned in said affidavit, and if any such can or cans are there found, to bring the same, together with the defendant or other persons in whose possession said can or cans are found, before such justice, magistrate or court. The proceedings may be amended at any time by adding parties or otherwise as justice may require; and the judgment may provide for the disposition of the can or cans found.

If upon the issue of any such process, the constable or other officer shall be unable to find the person or persons therein named, but shall find any can or cans as therein set forth, he shall bring such can or cans before such justice or magistrate, who shall thereupon proceed to determine the right of such complainant thereto, and if upon such hearing had thereon he shall be satisfied that such can or cans rightfully belong to such complainant, or that he is entitled to the possession thereof, he shall forthwith deliver the same into his possession or the possession of his agent.

The several superintendents of the railroad companies and the branches and connections thereof and steamboat lines operating their roads or lines, or any portion thereof in this state, shall have power to collect, gather and take into possession from any person or whenever found thereupon, any cans belonging to any such owner, dealer or shipper, and return the same to such owner, dealer or shipper, and may appoint an agent for that purpose, and such superintendent and such agent appointed by him shall have the same power and authority under this section as an agent of such owner, dealer or shipper.

The certificate of such superintendent appointing such agent, duly acknowledged, shall be presumptive evidence of the appointment and authority of such agent.

Any person authorized by this section to seize and take into his possession any such cans may, in case of resistance, call to his aid any police officer or constable of the town, village or city, who shall, when so called on, assist him in seizing or taking possession of such cans.

[L. 1865, ch. 295; R. S., 8th ed., 1440,
L. 1887, ch. 401; R. S., 8th ed., 1455,
L. 1890, ch. 25; R. S., 8th ed. (supp.), 3283,
consolidated substantially without change of substance,
except that penalties of ten to twenty-five dollars are superseded by a forfeiture to owner or agent of fifty dollars for every offense.]

§ 30. Canned and preserved food.—No packer or dealer in hermetically sealed, canned or preserved fruits, vegetables or other articles of food within this state, excepting canned or condensed milk or cream, shall sell or offer the same for sale for consumption within this state, unless the cans or jars containing the same shall have plainly printed upon a label thereupon, with a mark or term clearly indicating the grade or quality of the articles contained therein, the name, address and place of business of the person or corporation canning or packing them, or the name of the wholesale dealer in the state selling or offering the same for sale, and the name of the state, county and city, town or village where packed, preceded by the words "packed at."

If containing soaked goods or goods put up from products dried or cured before canning, there shall also be printed upon the face of such label in good legible type, one-half of an inch in height and three-eighths of an inch in width, the word "soaked."

Goods imported from foreign countries of foreign manufacture shall not be subject to the provisions of this section.

Any person violating any of the provisions of this section shall forfeit to the city, village or town where the violation occurs, the sum of fifty dollars, if a retail dealer, and the sum of five hundred dollars if a wholesale dealer or packer.

[L. 1885, ch. 269; R. S., 8th ed., 1461,

without change in substance, except that penalty for violation of section, of not to exceed fifty dollars in case of retail dealer, and from five hundred to one thousand dollars in case of wholesale dealers, payable to board of health, is made a forfeiture to city, village or town, of fifty dollars in case of retailer, and five hundred dollars in case of wholesaler.]

§ 31. Oysters in kegs or cans, how marked or branded.—Every person engaged in putting up oysters for sale in kegs or cans, or offering them for sale in kegs or cans, not previously marked or branded, shall mark or brand such kegs or cans with the true quantity of oysters in pints, quarts or gallons, which they may respectively hold, and not more than one quarter of such quantity shall be liquid.

Every person violating any provision of this section shall forfeit to the city, village or town where the violation occurs, the sum of one hundred dollars for every such violation.

[L. 1849, ch. 372; R. S., 8th ed., 1459,

without change in substance, except that penalty recovered of which one-half now goes to the poor and one-half to person recovering same, is made a forfeiture to city, village or town of one hundred dollars for every violation.]

§ 32. Fees and charges for elevators and warehouses.—The maximum charge for elevating, receiving, weighing and discharging grain by means of floating and stationary elevators and warehouses in any city having a population of one hundred and thirty thousand or over, shall not exceed five-eighths of one cent a bushel. In the process of handling grain by means of floating and stationary elevators, the lake vessels or propellers, the ocean vessels or steam-ships and canal boats shall only be required to pay the actual cost of trimming or shoveling to the leg of the elevator when unloading, and trimming cargo when loading.

For every violation of any provision of this article, the person

committing such violation shall forfeit to the people of the state the sum of two hundred and fifty dollars.

A person injured by a violation of this section, may recover any damages sustained from the person violating the same.

[L. 1888, ch. 581; R. S., 8th ed., 2416, without change in substance, except that the penalty of misdemeanor and fine not to exceed two hundred and fifty dollars and costs is made a forfeiture to the state of two hundred and fifty dollars.]

§ 33. Analysis of commercial fertilizers to be furnished.—All commercial fertilizers which shall be offered for sale, to be used in this state, shall be accompanied by an analysis stating the percentages contained therein of nitrogen or its equivalent of ammonia, of soluble and available phosphoric acid, the available phosphoric acid either to be soluble in water or in a neutral solution of citrate of ammonia as determined by the methods agreed on by the American Society of Agricultural Chemists, and of potash soluble in distilled water. A legible statement of the analysis of the goods and of the person, firm or corporation who have manufactured the same, shall be printed upon, or attached to each package of fertilizers offered for sale for use in this state; and where fertilizers are sold in bulk, to be used in this state, an analysis shall accompany the same with an affidavit that it is a true representation of the contents of the article or articles.

[L. 1890, ch. 437, § 1; R. S., 8th ed. (supp.), 3456, as am. by L. 1894, ch. 601, without change in substance.]

§ 34. List and analysis of fertilizers to be furnished the director of the State Agricultural Experiment Station at Geneva.—Manufacturers residing in this state and agents or sellers of fertilizers made by persons residing outside the limits of this state, shall, between the first and twentieth days of July in each year, furnish to the director of the New York State Agricultural Experiment Station at Geneva, a list of the commercial fertilizers they manu-

facture or offer for sale, for use in this state, with the names or brands by which they are known on the market, and the several percentages of nitrogen or its equivalent of ammonia, of phosphoric acid, both soluble and available, and of potash, either single or combined, contained in said fertilizers, as called for in the preceding section. Whenever any fertilizer or fertilizing ingredients are shipped or sold in bulk, for use by farmers in this state, a statement must be sent to the director of the New York State Agricultural Experiment Station at Geneva, giving the name of the goods so shipped, accompanied with an affidavit from the seller giving the analysis of such percentage guaranteed.

[L. 1890, ch. 437, § 2; R. S., 8th ed. (supp.), 3457, as am. by L. 1894, ch. 601,
without change in substance.]

§ 35. When statement shall be deemed false; application of sections.— Whenever a correct chemical analysis of any fertilizer offered for sale in this state shows a deficiency of more than one-third of one per centum of nitrogen or its equivalent of ammonia or one-half of one per centum of available phosphoric acid or one-half of one per centum of potash soluble in distilled water, such statement shall be deemed false.

The provisions of this article relating to fertilizers, shall apply to all fertilizers offered or exposed for sale for use in this state, the selling price of which is ten dollars per ton or higher, and of which they are part or parcel, and of any element into which they enter as fertilizing material, including nitrate of soda, sulphate of ammonia, dissolved bone black or bone black undissolved, any phosphate rock, treated or untreated with sulphuric or other acids, ashes from whatever source obtained, potash salts of all kind, fish scrap, dried or undried, also all combinations of phosphoric acid, nitrogen or potash, from whatever source obtained, as well as every article that is or may be combined for fertilizing purposes.

[L. 1890, ch. 437, § 3; R. S., 8th ed. (supp.), 3457, as am. by L. 1894, ch. 601,
without change in substance.]

§ 36. Inert nitrogenous matter to be stated.—All manufacturers or dealers exposing or offering for sale in this state fertilizers containing roasted leather or any other form of inert nitrogenous matter shall, in legible print, state the fact upon the package in which the fertilizers are offered or exposed for sale.

[L. 1890, ch. 437, § 4; R. S., 8th ed. (supp.), 3457, without change in substance.]

§ 37. Penalties.—Every person, firm or corporation violating any provisions of this article relating to the manufacture or sale of commercial fertilizers or the furnishing of lists or analysis thereof or statements of their ingredients or component parts, shall forfeit to the people of the state the sum of one hundred dollars for every such violation.

Agents, representatives or sellers of manufactured fertilizers or fertilizing material made or owned by parties outside of this state and offered for sale for use in this state, shall be subject to the provisions of this article relating to commercial fertilizers and to the penalties imposed thereby, and shall in all particulars take the place of their nonresident principals.

[L. 1890, ch. 437, §§ 5, 9; R. S., 8th ed. (supp.), 3457, as am. by L. 1894, ch. 601, without change except that a varying fine is made a forfeiture to state of one hundred dollars for every violation.]

§ 38. Duties of the director of the New York State Agricultural Experiment Station relating to fertilizers.—The director of the New York State Agricultural Experiment Station at Geneva shall enforce the provisions of this article relating to the manufacture, sale, prohibition of the sale and analysis of commercial fertilizers and prosecute actions in the name of the people for violation thereof, and for that purpose he may employ agents, counsel, chemists and experts. Such director or his duly authorized agents shall have full access, egress and ingress to all places of business, factories, buildings, cars, vessels or other places where any manufactured commercial fertilizer is sold,

offered for sale or manufactured; and may open any package, barrel or other thing containing any such fertilizer and take therefrom sufficient samples. Such samples may be divided into different portions and one or more portions sealed in such a way that it can not be opened without an examination, showing to the persons sealing the same that it has been opened, and may be delivered to the person from whom the sample is taken, or any other person that may be agreed on by such director or his agents taking the sample and the person from whom it is taken, and the portions so delivered, may on consent of the parties, be delivered to a chemist other than the chemist employed by such director for analysis.

【L. 1890, ch. 437, §§ 6, 7; R. S., 8th ed. (supp.), 3457, without change in substance, except that the provision as to jurisdiction of courts of special sessions is omitted, being sufficiently provided for by the Code of Criminal Procedure.】

§ 39. Sale of agricultural products on commission.—Any person doing business in this state as a commission merchant, or who receives from any person of this state agricultural products or farm produce raised in this state to sell on commission, shall, immediately on the receipt of such goods, send to the consignor a statement in writing, showing what property has been received. When any such person or commission merchant shall have sold twenty-five per centum of such property received by him, he shall, when requested, immediately render a true statement to the consignor, showing what portion of such consignment has been sold and the price received therefor.

【L. 1892, ch. 656, §§ 1, 2; R. S., 8th ed. (supp.), 3636, without change in substance.】

§ 40. Duty of hotel keepers to provide fire-escapes.—Every owner, lessee, proprietor or manager of a hotel, not fire-proof, exceeding two stories in height, shall cause to be placed, a rope or other better appliance, to be used as a fire-escape, in each

room of such hotel, used as a lodging-room, above the ground floor, which rope or other appliance shall be securely fastened into one of the joists or timbers next adjoining a frame of a window of such room. Such rope or appliance shall be at all times kept coiled up and exposed to the plain view of any occupant of said room, the coil to be fastened in such a slight manner as to be easily and quickly loosened and uncoiled; and if a rope, it shall be not less than three-fourths of an inch in diameter, and of sufficient length to reach from such window to the ground. Such rope, appliance, iron hook or eye and fastenings shall be of sufficient strength to sustain a weight of four hundred pounds. Such owner, lessee, proprietor or manager must cause to be posted in a conspicuous place in each room and hall of such hotel, above the ground floor, a printed notice to the effect that the rope or appliance is so placed in each such room for use in case of fire, and giving full directions for such use.

It is the duty of the chief engineer or the officer performing the duties of a chief engineer of the fire department of a city or village to inspect, or cause to be inspected by some person deputized by him for that purpose, in the months of January and July of each year, each such room of every hotel in his city or village, and to ascertain if the provisions of this section are complied with, and to make and file a written report with the mayor, president or other officer performing the duties of chief executive of such city or village, on or before the fifteenth day of February and August of each year, showing what hotels he had so inspected, and specifying which of them have fully complied with the provisions of this section, and which, if any, have not, and in what respect and to what extent. An owner, lessee, proprietor, manager or other person who obstructs or prevents such inspection is liable to a penalty of fifty dollars for each such offense. Such mayor, president or other chief executive officer, shall sue for such penalty in the name of his city or village, and shall proceed against any person criminally violating this section.

[L. 1887, ch. 720, §§ 1, 2, 4; R. S., 8th ed., 1421,
without change in substance.]

ARTICLE III.

Auctions and Auctioneers.

Section 50. Conduct of auction sales.

51. Commissions; penalty.

52. Power of common council of cities.

53. Bond and appointment of auctioneers in cities.

54. Agents of comptroller.

Section 50. Conduct of auction sales.— Goods sold at auction shall, in all cases, be struck off to the highest bidder. When struck off and the contract be not immediately executed by the payment of the price or the delivery of the goods, the auctioneer shall enter in a sale book kept by him for that purpose a memorandum of the sale, specifying the nature, quantity and price of the goods, the terms of sale and the names of the purchaser and of the person on whose account the sale is made.

[R. S., pt. I, ch. 17, tit. I, §§ 2, 26; R. S., 8th ed., 1413, without change in substance.]

§ 51. Commissions; penalty.— An auctioneer in any county, other than New York or Kings, shall not, without a previous agreement in writing, with the owner or consignee of the goods sold, demand or receive a greater compensation for his services than a commission of two and one-half per centum on the amount of any sale, public or private, made by him. For a violation of this section he shall refund the moneys illegally received and forfeit two hundred and fifty dollars to each person from whom he demands or receives an unlawful compensation or commission.

[R. S., pt. I, ch. 17, tit. I, §§ 23, 24; R. S., 8th ed., 1413, without change in substance.]

§ 52. Power of common council of cities.— Except as otherwise provided in the charter of the city, the common council of a city may designate such place or places within such city for the sale

by auction of horses, carriages and household furniture, as it deems expedient.

[R. S., pt. I, ch. 17, tit. I, § 20; R. S., 8th ed., 1412, without change in substance.]

§ 53. Bond and appointment of auctioneers in cities.— No person, except one whose auction business is confined to the sale of farm property, shall act as auctioneer on the sale at public auction of personal property in any city until he has entered into a bond to the people of the state, with at least two sufficient sureties, in the penalty of five thousand dollars, in a city having a population exceeding fifty thousand, and elsewhere in the penalty of one thousand dollars, conditioned that he will faithfully perform his duties as such auctioneer and render such accounts and pay such duties as he may be required by law.

Such bond must be approved in writing by the agent appointed by the comptroller, pursuant to this article, or if in a city where there is no such agent, by the mayor or recorder thereof; and must be filed with the comptroller of the state, who must thereon deliver to such person a written certificate of appointment, stating the city for which appointed. Such certificate shall be recorded in a book kept by the comptroller for that purpose and a certified copy thereof shall be delivered to such agent, or if there be none, filed in the office of the clerk of the county in which such city is located.

Such undertaking and certificate shall be annually renewed on or before the first Monday of January.

This section does not repeal or supersede the provisions of any local statute or city charter.

[R. S., pt. I, ch. 17, tit. I, §§ 10, 11, 12, 13, 14; R. S., 8th ed., 1411,

L. 1838, ch. 52; R. S., 8th ed., 1416,

L. 1846, ch. 62, § 4; R. S., 8th ed., 1417,

L. 1878, ch. 287; R. S., 8th ed., 1419,

L. 1883, ch. 310; R. S., 8th ed., 1417, 1418,

without change in substance.]

§ 54. Agents of comptroller.—The comptroller may employ such agent or agents as he deems necessary in any city to see that the provisions of this act are carried into effect. Such agents may take and approve the bonds required by law and shall transmit all bonds taken and approved by them to the comptroller within ten days after the same are approved. The fees of such agents for taking and approving such bonds, shall be five dollars.

[L. 1849, ch. 399, § 2; R. S., 8th ed., 1418,
without change in substance.]

Note.—This article and the foot-notes seem to require explanation. Title I, chapter XVII, part I, R. S., was entitled “Of sales by auctioneers” and consisted of forty sections, the greater part of which were made up of minute regulations concerning the collection of certain duties on auction sales imposed by the first section of the title. Exemptions from duties were scheduled in section four. By chapter 62 of the Laws of 1846, said sections one and four were repealed, and substitutes were provided by sections one and two of the later act. In 1866, by chapter 547, the legislature amended sections one and two of the act of 1846, “to read as follows,” substituting new sections for those which had superseded the provisions of the revised statutes. By chapter 106, L. 1868, chapter 547, L. 1866 was repealed, and with this repeal, held the Court of Appeals in *People vs. Wilmerding*, 136 N. Y., 363, fell all the general legislation of the state requiring the payment of duties on goods sold at auction. As a result, many of the other provisions of the title of the revised statutes above referred to, and of the act of 1846 have become obsolete. Of course the provisions of special charters have not been affected. The commissioners believe that the foregoing five sections present in condensed form, all that retains vitality of the statutes found in 8th ed., R. S., pp. 1408-1419, covering the general laws of the state on the subject of auctions and auctioneers.

ARTICLE IV.

Peddlers.

Section 60. Application for license.

61. Licenses.

62. Penalties.

63. Arrest and conviction of offender.

64. Municipal regulations.

65. License for using dogs before vehicles.

Section 60. Application for license.—No person shall travel from place to place, within this state, for the purpose of carrying to sell or exposing for sale, any goods, wares or merchandise of the growth, product or manufacture of any foreign country, other than family groceries and provisions, without a license as a peddler, granted by the secretary of state. A written application shall be made, to be filed with the secretary of state, signed by the applicant or his authorized agent, in which shall be stated the manner in which the applicant intends to travel and trade, whether on foot or with one or more horses or other beasts of burden, or with any sort of carriage or boat. He shall file with the application, the receipt of the treasurer of the state, showing that he had paid into the state treasury the following duties:

For one year's license and proportionally for any shorter term not less than six months, if he intends to travel on foot the sum of twenty dollars; if with a single horse or other beast carrying a burden, or with a boat, the sum of thirty dollars; and if with any vehicle or carriage drawn by more than one horse or other animal, the sum of fifty dollars.

【R. S., pt. I, ch. 17, tit. IV, §§ 1, 2, 3; R. S., 8th ed., 145, without change in substance.】

§ 61. Licenses.—The secretary of state shall, on payment of his fees, and on filing the receipt of the treasurer, countersigned by the comptroller, grant a license under his seal of office, signed by himself or his deputy, authorizing the applicant to travel and trade within this state as a peddler, in the manner stated therein,

for the term of one year from the date of the license or for any shorter term not less than six months. Every such license shall be renewed on the expiration thereof by the secretary of state on the same terms and conditions that the original license was granted, if the renewal be applied for.

[R. S., pt. I, ch. 17, tit. IV, §§ 4, 5; R. S., 8th ed., 1431, without change in substance.]

§ 62. Penalties.—Every person found traveling and trading within this state contrary to the provisions of this article, or contrary to the terms of any license that may have been granted to him under this article, shall, for each offense, forfeit to the town in which the offense shall be committed the sum of twenty-five dollars, to be applied to the support of the poor of the town. Every person traveling or trading within this state, having a license, who refuses to produce a license as a peddler to any officer or citizen who demands the production of the same shall, for each offense, forfeit to the town in which the demand is made the sum of ten dollars, to be applied to the support of the poor thereof. The refusal of any such person to produce a license when demanded shall be presumptive evidence that he is traveling and trading without a license.

No action for the recovery of any penalty imposed by this article shall be maintained unless it be brought within sixty days after the commission of the offense charged.

[R. S., pt. I, ch. 17, tit. IV, §§ 6, 7, 11; R. S., 8th ed., 1431, without change in substance, except that penalty of imprisonment for one month is omitted.]

§ 63. Arrest and conviction of offender.—The overseers of the poor shall see that the provisions of this article are enforced in their respective towns. Any citizen may arrest any person trading as a peddler who neglects or refuses to produce his license on demand, and shall immediately convey such person before some justice of the peace of the county. If the fact that the person so arrested has traded without a license be proved to •

the satisfaction of the justice, he shall convict such person of an offense against this article and on such conviction shall issue his warrant to some constable of the county, commanding such constable to levy and collect from the personal property of the offender the sum of twenty-five dollars, with the costs of the proceeding, not exceeding five dollars. The penalty collected on such warrant shall be paid by the justice to the overseer of the poor of the town where the offense was committed.

If it appears in said proceeding that the person arrested refused to produce his license or to disclose his name when lawfully required, no costs shall be allowed such defendant, nor shall he maintain an action for false imprisonment.

[R. S., pt. I, ch. 17, tit. IV, §§ 8, 9; R. S., 8th ed., 1431, 1432, without change in substance.]

§ 64. Municipal regulations.—This article shall not affect the application of any ordinance, by-law or regulations of a municipal corporation relating to hawkers and peddlers within the limits of such corporation, but the provisions of this article are to be complied with in addition to the requirements of any such ordinance, by-law or regulation.

[New.]

§ 65. License for using dogs before vehicles.—Any person who shall use a dog for drawing or helping to draw any vehicle in any city or incorporated village, for peddling or any other business purpose, shall take out a license for that purpose from the mayor of the city or president of the village, and shall have the number of the license and the residence of the owner distinctly painted on such vehicle.

A person violating this section shall forfeit to the city or village where the violation occurs one dollar for the first offense and ten dollars for each subsequent offense.

[L. 1867, ch. 375, § 6; R. S., 8th ed., 2751, without change in substance.]

ARTICLE V.

Flour and Meal.

Section 70. How packed.

- 71. Size of casks.
- 72. How casks shall be marked and branded.
- 73. Casks of wheat flour, how branded.
- 74. Casks of rye flour, how branded.
- 75. Casks of meal, how branded.
- 76. Prohibition against wrong marking.
- 77. Counterfeiting marks prohibited.
- 78. Prohibition against sale of mixed flour.
- 79. Prohibition against transportation of Indian meal on deck.

Section 70. How packed.—All wheat flour, rye flour, Indian meal or buckwheat meal manufactured in this state for exportation shall be packed in good strong casks made of seasoned oak or other sufficient timber, and hooped with at least ten hoops, three of which shall be on each chime, and properly nailed.

[R. S., pt. I, tit. II, ch. 17, § 3; R. S., 8th ed., 1423, without change in substance.]

§ 71. Size of casks.—The casks shall be of two sizes only. One size shall contain one hundred and ninety-six pounds of flour or meal, with staves twenty-seven inches long and each head sixteen and one-half inches in diameter; and the other size shall contain ninety-eight pounds, with staves twenty-two inches long and each head fourteen inches in diameter, or with staves twenty-seven inches long and each head not more than twelve inches in diameter. But Indian meal may likewise be packed in hogsheads which shall contain eight hundred pounds.

[R. S., pt. I, ch. 17, tit. II, § 4; R. S., 8th ed., 1423, without change in substance.]

§ 72. How casks shall be marked and branded.—The casks shall be made as nearly straight as may be, and their tare shall

be marked on the head with a marking iron; they shall be branded with the weight of the flour and meal contained therein, and branded or painted with the initial letter of the Christian name and the surname at full length of the manufacturer thereof; except hogsheads of Indian meal, on which the weight only shall be branded.

[R. S., pt. I, ch. 17, tit. II, § 5; R. S., 8th ed., 1423, L. 1833, ch. 261; R. S., 8th ed., 1427, without change in substance.]

§ 73. Casks of wheat flour, how branded.—Every such cask of wheat flour shall also be branded as follows: If of a very superior quality “extra superfine;” if of a quality now branded “superfine” with the word “superfine;” if of a third quality, “fine;” if of a fourth quality, “fine middlings;” if of a fifth quality, “middlings;” if of a sixth quality, “ship stuffs.”

[R. S., pt. I, ch. 17, tit. II, § 6; R. S., 8th ed., 1423, without change in substance.]

§ 74. Casks of rye flour, how branded.—Each cask of rye flour intended for the first quality shall be branded with the words “superfine rye flour,” and each cask intended for the second quality, with the words “fine rye flour.”

[R. S., pt. I, ch. 17, tit. II, § 7; R. S., 8th ed., 1423, without change in substance.]

§ 75. Casks of meal, how branded.—Each cask of Indian meal shall be branded with the words “Indian meal;” and each cask of buckwheat meal, with the letter and the word “B meal.”

[R. S., pt. I, ch. 17, tit. II, § 8; R. S., 8th ed., 1424, without change in substance.]

§ 76. Prohibition against wrong marking.—A person shall not knowingly offer for sale any cask of flour or meal upon which the tare is undermarked, or in which there is a less quantity of meal than is branded thereupon. A manufacturer of flour or

meal shall not undermark the tare of any cask, or put therein a less quantity of meal than is branded thereupon; but if the light weight of any such cask has been occasioned by some accident unknown to the manufacturer, and which happened after the packing of the cask, it shall not be deemed a violation of this section.

A person violating any provision of this section shall forfeit to the people of the state the sum of five dollars for every such violation.

[R. S., pt. I, ch. 17, tit. II, §§ 17, 18; R. S., 8th ed., 1424, without change in substance, except the penalty of five dollars, divided between the person injured and the poor, is made a forfeiture to the state.]

§ 77. Counterfeiting marks prohibited.—No person shall alter or counterfeit any brand marks, whether state or private, made under the provisions of this article, or put any flour or meal in any empty cask previously used and branded, and offer the same for sale in such cask without first cutting out the brands.

A person violating the provisions of this section in regard to altering or counterfeiting any brand marks shall forfeit to the people of the state the sum of one hundred dollars for each such violation, and a person violating any other provision of this section shall forfeit to the people of the state the sum of five dollars for each such violation.

[R. S., pt. I, ch. 17, tit. II, § 21; R. S., 8th ed., 1424, without change in substance.]

§ 78. Prohibition against the sale of mixed flour.—No person shall knowingly offer for sale as good wheat flour, any flour which contains a mixture of Indian meal, or any other mixtures, or any unsound flour. A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

[R. S., pt. I, ch. 17, tit. II, § 22; R. S., 8th ed., 1424, without change in substance.]

§ 79. Prohibition against the transportation of Indian meal on deck.—No person having charge of any vessel shall transport, into the city of New York, any Indian meal upon the deck of any vessel.

Every person violating this section shall forfeit to the people of the state twenty cents for every barrel and eighty cents for every hogshead transported in violation of any provision of this section.

[R. S., pt. I, ch. 17, tit. II, § 23; R. S., 8th ed., 1424, without change in substance.]

ARTICLE VI.

Beef and Pork.

Section 90. Barrels and tierces, how made.

91. Barrels in Suffolk, Kings and Queens counties.

92. Qualities of pork.

Section 90. Barrels and tierces, how made.—All barrels in which any pork or beef is repacked, shall be of good, seasoned white oak or white ash staves and heading, free from every defect; and each barrel shall contain two hundred pounds of beef or pork.

The barrel shall measure seventeen and one-half inches between the chimes, and be twenty-eight inches long, and hooped with twelve good, hickory, white oak or other substantial hoops. If made of ash staves, it shall be hooped with at least fourteen hoops. The staves and heads shall be of good thick stuff, the heads not less than three-quarters of an inch thick; and each stave, on each edge, at the bilge, shall not be less than one-half an inch thick, when finished. The hoops shall be well set and drove, and the barrels branded on the bilge with at least the initial letters of the cooper's name. The half barrel shall contain not less than fifteen, nor more than sixteen gallons, and be made in proportion to and of like materials as a whole barrel, and shall contain one-half the quantity of beef or pork of the whole barrel.

The tierce shall be made in proportion to and of like materials

as a barrel, and shall contain three hundred pounds of beef or pork.

[R. S., pt. I, ch. 17, tit. II, §§ 36, 37, 39; R. S., 8th ed., 1425, without change in substance, except that the provision in regard to measurement of tierce is new.]

§ 91. Barrels in Suffolk, Kings and Queens counties.—All beef and pork which is repacked in and exported from the counties of Suffolk, Kings and Queens, may be packed in barrels as nearly as straight as may be, made of good, seasoned red oak staves and heading of the growth of such counties respectively, free from sap and every defect and made otherwise as above directed.

[R. S., pt. I, ch. 12, tit. II, § 40; R. S., 8th ed., 1425, without change in substance.]

§ 92. Qualities of pork.—Each barrel of pork shall be branded on one of its heads by its name, and contain either “mess pork,” “prime pork,” or “cargo pork.” “Mess pork” consists of the sides of good, fat hogs, exclusive of all other pieces. “Prime pork” is pork of which there is in a barrel not more than three shoulders, the legs being cut off at the knee joint, not more than twenty-four pounds of heads which have the ears and snouts cut off, the snouts cut off to the opening of the jaws, and the brains and bloody grizzle taken out of the heads; and the rest made up of side pieces, neck and tail pieces. “Cargo pork” is pork of which there is not in a barrel more than thirty pounds of head and four shoulders, and it shall be otherwise merchantable pork. “Side pork” so repacked, shall be cut from the back bone to the belly, in pieces about five inches wide, and which in weight are not under four pounds; otherwise, the barrels containing the same shall not be branded merchantable pork.

[R. S., pt. I, ch. 17, tit. II, § 42; R. S., 8th ed., 1425, without change in substance.]

ARTICLE VII.

Hops and Hay.

Section 100. Bales of hops to be marked.

101. Adulteration of hops prohibited; counterfeiting marks.

102. Standard weight of hop bales and tare thereon.

103. Bales of hay to be marked.

104. Prohibition against the adulteration of hay.

105. Weight to be marked on bale.

Section 100. Bales of hops to be marked.— Every person putting up hops for sale or exportation shall mark or stamp on each bale or other package containing the same, in a legible manner, the initial letter of his Christian name, and his surname at full length, and the gross weight of such bale or package, before its removal from the place where the hops are put up.

A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

[R. S., pt. I, ch. 17, tit. II, § 163; R. S., 8th ed., 1426, L. 1884, ch. 94, § 2; R. S., 8th ed., 1461, L. 1889, ch. 239, § 2; R. S., 8th ed. (supp.), 3284, without change in substance.]

§ 101. Adulteration of hops prohibited; counterfeiting marks.— No person shall intermix with any hops any foreign or improper substance, or in any manner adulterate their quality.

No person shall counterfeit the marks on any bale or package of hops, or empty any bale or package of hops so marked, for the purpose of putting therein other hops for sale or exportation, without first erasing such marks.

A person violating any provision of this section shall forfeit to the people of the state the sum of one hundred dollars for each such violation.

[R. S., pt. I, ch. 17, tit. II, art 10, §§ 166, 168; R. S., 8th ed., 1426, without change in substance, except that the civil penalty is extended to first paragraph. A violation of the first paragraph is made a misdemeanor by Penal Code.]

§ 102. Standard weight of hop bales and tare thereon.—A bale of hops sold in this state shall not weigh less than one hundred and seventy-five nor more than two hundred and ten pounds. The tare to be deducted is five pounds. The standard weight of sacking for baling is not less than twenty-four nor more than thirty ounces for each yard; five yards thereof is the maximum quantity to be used for each bale, and any excess in the weight of such sacking or other extraneous matter used in baling may be deducted as additional tare.

[L. 1884, ch. 94, § 1; R. S., 8th ed., 1461,
L. 1889, ch. 239, § 1; R. S., 8th ed. (supp.), 3284,
re-enacted without change in substance.]

§ 103. Bales of hay to be marked.— Every person who puts up and presses any bundle of hay for market shall mark or brand, in a legible manner, the initials of his name or the initial letter of his Christian name, and his surname at full length, and the name of the town in which he resides, on some board or wood attached to such bundle of hay. Such hay may be sold with or without deduction for tare, and by the weight as marked, or any other standard weight as agreed between seller and buyer.

A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

[R. S., pt. I, ch. 17, tit. III, §§ 5, 7, 8; R. S., 8th ed., 1429,
L. 1860, ch. 155, § 1; R. S., 8th ed., 1429,
without change in substance, except that penalty of one dollar damages and costs of suit is superseded by forfeiture to state of five dollars for every violation.]

§ 104. Prohibition against the adulteration of hay. — No person shall put or conceal in any such bundle of hay any wet or damaged hay, or other materials, or hay of any inferior quality to that which plainly appears upon the outside of such bundle.

A person violating this section shall forfeit to the people of the state the sum of five dollars for each such violation.

[R. S., pt. I, ch. 17, tit. III, §§ 6, 7; R. S., 8th ed., 1429,
without change in substance except as in note to § 103 ante.]

§ 105. Weight to be marked on bale.—The gross weight shall be plainly marked on each bale of hay or straw sold or offered for sale in this state; and no baled hay or straw shall be so sold or offered for sale which weighs less than such gross weight after deducting five pounds from such bale for shrinkage. And no baled hay or straw shall be so sold or offered for sale with more than twenty pounds of wood to the bale, the weight of which is two hundred pounds or upward, or more than ten pounds of wood for bales weighing less than two hundred pounds.

A person violating any provision of this section shall forfeit to the people of the state the sum of five dollars for each such violation.

[L. 1875, ch. 175, §§ 1, 2; R. S., 8th ed., 1430, without change in substance, except that penalty of misdemeanor is made a forfeiture to the state of five dollars.]

ARTICLE VIII.

Laws Repealed; When to Take Effect.

Section 110. Laws repealed.

111. When to take effect.

Section 110. Laws repealed. — Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 111. When to take effect.—This chapter shall take effect on the first day of October, eighteen hundred and ninety-six.

Schedule of Laws Repealed.

| Laws of— | Chapter. | Section. |
|---|----------|-------------------|
| Revised Statutes, part I, chapter 17..... | | All. |
| 1829..... | 297..... | All. |
| 1831..... | 315..... | All. |
| 1833..... | 261..... | All. |
| 1835..... | 62..... | All. |
| 1835..... | 238..... | All. |
| 1835..... | 282..... | All. |
| 1836..... | 475..... | All. |
| 1838..... | 52..... | All. |
| 1840..... | 70..... | All. |
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| R. S., pt. I, ch. 17, tit. I, § 2. | 1409 . . . | 50 | |
| R. S., pt. I, ch. 17, tit. I, § 3. | 1409 . . . | | Obsolete. |
| R. S., pt. I, ch. 17, tit. I, § 4. | 1410 . . . | | Obsolete. |
| R. S., pt. I, ch. 17, tit. I, § 5. | 1410 . . . | | Obsolete. |
| R. S., pt. I, ch. 17, tit. I, § 6. | 1410 . . . | | Obsolete. |
| R. S., pt. I, ch. 17, tit. I, § 7. | 1410 . . . | | Obsolete. |
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| R. S., pt. I, ch. 17, tit. I, § 16. | 1412 . . . | | Obsolete. |
| R. S., pt. I, ch. 17, tit. I, § 17. | 1412 . . . | | Obsolete. |
| R. S., pt. I, ch. 17, tit. I, § 18. | 1412 . . . | | Obsolete. |
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| R. S., pt. I, ch. 17, tit. I, § 22. | 1412 . . . | | New York Con. Act, § 1988. |
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| 1846, ch. 62, §§ 1-10..... | 1416-17. | | Obsolete. |
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| 1850, ch. 307, §§ 2, 3..... | 1458... | | Obsolete. |
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| 1887, ch. 720, §§ 1, 2..... | 1421... | | See Penal Code, § 447b. |
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BENEVOLENT ORDERS LAW.

BENEVOLENT ORDERS LAW.

[This bill became ch. 377 of the Laws of 1896.]

REVISERS' PRELIMINARY NOTE TO THE BENEVOLENT ORDERS LAW.

The accompanying chapter of the general laws, known as the Benevolent Orders Law, includes the existing statutes relating to the election of trustees to hold and manage the property of lodges, chapters, etc., of benevolent orders, and the formation of corporations to hold and manage property owned jointly by two or more of such lodges, chapters, etc. The provisions of existing law are re-enacted in the revision without any substantial change.

Respectfully submitted,

CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON,
A. JUDD NORTHRUP.

Dated February 5, 1896.

BENEVOLENT ORDERS LAW.

AN ACT in relation to benevolent orders, constituting chapter forty-four of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XLIV OF THE GENERAL LAWS.

The Benevolent Orders Law.

Section 1. Short title.

2. Organization.
3. Powers.
4. Terms of trustees.
5. Powers of trustees.
6. Reorganization.
7. Joint corporations.
8. Trustees.
9. Powers.
10. Mortgaging property.
11. Laws repealed.
12. When to take effect.

Section 1. Short title.—This chapter shall be known as the benevolent orders law.

[New.]

§ 2. Organization.—Either of the following orders.

1. A lodge of Free and Accepted Masons duly chartered by and installed according to the general rules and regulations of the Grand Lodge of Free and Accepted Masons of the state of New York;

2. A chapter of Royal Arch Masons duly chartered by and installed according to the general rules and regulations of the Grand Chapter of Royal Arch Masons of the state of New York;

3. A council of Royal and Select Masons duly chartered by and installed according to the general rules and regulations of the Grand Council of Royal and Select Masters of the state of New York;

4. A Commandery of Knights Templar duly chartered by and instituted according to the general rules and regulations of the Grand Commandery of the state of New York;

5. A consistory, chapter, council or lodge duly chartered by and instituted according to the general rules and regulations of the Supreme Council of the Ancient and Accepted Scottish Rite for the Northern Jurisdiction of the United States;

6. A lodge of Odd Fellows, duly chartered by and installed according to the general rules and regulations of the Grand Lodge of the Independent Order of Odd Fellows of the State of New York;

7. A Temple of Nobles of the Mystic Shrine duly chartered by and instituted according to the general rules and regulations of the Imperial Council of the Ancient Arabic Order of the Nobles of the Mystic Shrine for the United States of America;

8. A lodge of the Knights of Pythias, duly chartered by and installed according to the general rules and regulations of the Grand Lodge of the Knights of Pythias of the state of New York;

9. A post of the Grand Army of the Republic, chartered and installed according to the regulations of that organization:

May elect at any regular communication, convocation, encampment or other regular meeting thereof, by whatever name known, held in accordance with the constitution and general rules and regulations of such grand lodge, chapter, commandery or council, or other governing body to which it belongs, or with which it is connected, and in conformity to its own by-laws, if it has any, three trustees for such lodge, chapter, commandery, consistory, council, temple or post who shall be members thereof in full membership and in good and regular standing therein; and

may file in the office of the secretary of state, a certificate of such election, signed and acknowledged by the first three elective officers of such lodge, chapter, commandery, consistory, council, temple or post, stating the time and place of such election and that the same was regular, the names of such trustees, and the term severally for which they are elected to serve, and the name of the lodge, chapter, commandery, consistory, council, temple or post for which they are elected.

[L. 1886, ch. 317, § 1; R. S., 8th ed., 2090,
L. 1869, ch. 176; R. S., 8th ed., 2093,
L. 1885, ch. 419; R. S., 8th ed., 2093,
L. 1873, ch. 417, § 1; R. S., 8th ed., 2093,
L. 1871, ch. 308, § 1,
L. 1888, ch. 290, § 1,
consolidated, without change of substance.]

§ 3. Powers.—Such trustees may take, hold and convey by and under the direction of such lodge, chapter, commandery, consistory, council, temple or post, all the temporalities and property belonging thereto, whether real or personal, and whether given, granted or devised directly to it or to any person or persons for it or in trust for its use and benefit, and may sue for and recover, hold and enjoy all the debts, demands, rights and privileges, and all buildings and places of assemblage, with the appurtenances, and all other estate and property belonging to it in whatsoever manner the same may have been acquired. or in whose name soever the same may be held, as fully as if the right and title thereto had been originally vested in them; and may purchase and hold for the purposes of the lodge, chapter, commandery, consistory, council, temple or post other real and personal property, and demise, lease and improve the same. Every such lodge, chapter, commandery, consistory, council, temple or post may make rules and regulations, not inconsistent with the laws of this state, or with the constitution or general rules or laws of the grand lodge or other governing body to which it is subordinate, for managing the temporal affairs thereof, and for the disposition of its

property and other temporal concerns and revenue belonging to it, and the secretary and treasurer thereof, duly elected and installed according to its constitution and general regulations and laws, shall, for the time being, be ex officio its secretary and treasurer. No board of trustees for any lodge, chapter, commandery, consistory, council, temple or post filing the certificate aforesaid, shall be deemed to be dissolved for any neglect or omission to elect a trustee annually or fill any vacancy or vacancies that may occur or exist at any time in said board, but it shall and may be lawful for said lodge, chapter, commandery, consistory, council, temple or post to fill such vacancy or vacancies at any regular communication thereafter to be held, and till a vacancy arising from the expiration of the term of office of a trustee is filled as aforesaid, he shall continue to hold the said office and perform the duties thereof.

[L. 1866, ch. 317, §§ 1, 4; R. S., 8th ed., 2091,

L. 1873, ch. 417, §§ 1, 4; R. S., 8th ed., 2094,

L. 1871, ch. 308, §§ 1, 4,

L. 1888, ch. 290, §§ 1, 4,

consolidated, without change of substance, except that the limitation as to the amount of property which benevolent orders can hold are omitted.]

§ 4. Terms of trustees.— The persons first elected trustees of such lodge, chapter, commandery, consistory, council, temple or post, if a lodge of Free and Accepted Masons, or a chapter of Royal Arch Masons, shall be divided by lot by the officer, making the certificate of election, so that the term of one shall expire on the day of the festival of Saint John the Evangelist, next thereafter, and another in one year, and the third in two years thereafter. If other than a lodge or chapter of Free and Accepted Masons, the trustees first elected shall be divided by lot by the officers making the certificate of election, so that the term of one will expire in one year, one in two years, and one in three years thereafter. One trustee shall annually thereafter be elected by such lodge, chapter, commandery, consistory, council, temple or

post, by ballot, in the same manner and at the same time as the first three officers thereof severally are or shall be elected according to its constitution, by-laws and regulations; and a certificate of such election under the hands of such officers and the seal of the lodge, chapter, commandery, consistory, council, temple or post, if it has any, shall be made, and shall be evidence of such election and entitle the person so elected to act as trustee. If any trustee dies, resigns, demits, is suspended or expelled, removes from the state, or becomes incapacitated for performing the duties of his office, his office shall be deemed vacant. Such lodge, chapter, commandery, consistory, council, temple or post may, at any regular communication, convocation, encampment or other regular meeting, by whatever name known, fill any vacancy in the office of trustee, by ballot, which election shall be certified in like manner and with like effect as an annual election, and the person so elected shall hold his office during the unexpired term of the trustee, whose place he was elected to fill.

[L. 1886, ch. 317, §§ 2, 3; R. S., 8th ed., 2091,
L. 1873, ch. 417, §§ 2, 3, R. S., 8th ed., 2094,
L. 1871, ch. 308, §§ 2, 3,
L. 1888, ch. 290, §§ 2, 3,
consolidated, without change of substance.]

§ 5. Powers of trustees.—Such trustees shall have the care, management and control of all the temporalities and property of the lodge, chapter, commandery, consistory, council, temple or post, and they shall not sell, convey or dispose of any property except by and under its direction, duly had or given at a regular or stated communication, convocation, encampment or meeting thereof, according to its constitution and general regulations. They shall at all times obey and abide by the directions, orders and resolutions of such lodge, chapter, commandery, consistory, council, temple or post duly passed at any regular or stated communication, convocation, encampment or meeting thereof not in conflict with the constitution and laws of this state or of the grand

body to which it shall be subordinate, or of such lodge, chapter, commandery, consistory, council, temple or post. If a lodge of Free and Accepted Masons, or a chapter of Royal Arch Masons, surrender its warrant to the grand body to which it is subordinate or is expelled or becomes extinct, according to the general rules or regulations of such body, the trustees then in office shall, out of the property belonging to such lodge or chapter, satisfy all just debts due from it and transfer the residue of its property to the "trustees of the Masonic hall and asylum fund," a corporation created by chapter two hundred and seventy-two of the laws of eighteen hundred and sixty-four, entitled "An act to incorporate the trustees of the Masonic hall and asylum fund," and unless reclaimed by such lodge or chapter with three years from such transfer, in accordance with the constitution and general regulations of such grand body, the same, with the avails or increase thereof, shall be applied by the "trustees of the Masonic hall and asylum fund" to the benevolent purposes for which such trustees were created in and by such act.

[L. 1886, ch. 317, §§ 2, 3; R. S., 8th ed., 2091,
L. 1873, ch. 417, §§ 2, 3; R. S., 8th ed., 2094,
L. 1871, ch. 308, §§ 2, 3,
L. 1888, ch. 290, §§ 2, 3,
consolidated, without change of substance.]

§ 6. Reorganization.—Any such lodge, chapter, commandery, consistory, council, temple or post heretofore incorporated by the laws of this state, or thereby heretofore enabled to take and hold real or personal property, or both, may surrender its act of incorporation, charter or privilege conferred upon it, and may become enabled to take and hold real or personal property, or both, under the provisions of this chapter, on making and filing a certificate in the manner specified in this chapter, and stating therein, in addition to what is required in such a certificate, the surrender of such act of incorporation, charter or privilege, specifying the same. The property theretofore held and possessed by it shall be fully vested in its trustees, who shall have

all the rights, powers and privileges, and be subject to all the provisions of this chapter.

[L. 1866, ch. 317, § 6; R. S., 8th ed., 2092,
L. 1873, ch. 417, § 6; R. S., 8th ed., 2095,
L. 1871, ch. 308, § 5,
consolidated, without change of substance.]

§ 7. Joint corporations.—Any member of masonic bodies within the state, chartered by the Grand Lodge of Free and Accepted Masons of the State of New York, the Grand Chapter of Royal Arch Masons of the State of New York, the Grand Council of Royal and Select Masters of the State of New York, the Grand Commandery of Knights Templar of the State of New York, the Supreme Council of the Ancient and Accepted Scottish Rite for the Northern Masonic Jurisdiction, United States of America, or the Imperial Council of the Ancient Arabic Order of Nobles of the Mystic Shrine, United States of America; any lodges, encampments and cantons within the State chartered by the Grand Lodge of the Independent Order of Odd Fellows, the Grand Encampment of the Independent order of Odd Fellows, or by the Sovereign Grand Lodge of the Independent Order of Odd Fellows; any lodges or other bodies of the Knights of Pythias, duly chartered by and installed according to the general rules and regulations of the Grand Lodge of Knights of Pythias of the state of New York, any posts of the Grand Army of the Republic, chartered and installed according to the regulations of that organization, any lodges or other bodies of the Deutcher Orden der Harugari, duly chartered and installed according to the general rules and regulations of the Grand Lodge of the Deutcher Orden der Harugari of the state of New York, or of the Sovereign Grand Lodge of the Deutcher Orden der Harugari of the United States, and any number of trades unions, trades assemblies trades associations or labor organizations, may unite in forming a corporation for the purpose of acquiring, constructing, maintaining and managing a hall, temple or other building and of creating, collecting, and

maintaining a library for the use of the bodies uniting to form such corporation. Each body uniting to form such corporation shall, at a regular meeting thereof, held in accordance with its constitution and general rules and regulations or by-laws, elect a member thereof to be a trustee of such corporation, and shall make and file in the office of the clerk of the county where such building is to be located a certificate of such election signed and acknowledged by the highest two officers thereof, stating the time and place of the election, its regularity, the name of the trustee, and the name of the body from which he was elected. The trustees so elected shall make, acknowledge and file a certificate stating the name of the corporation to be formed, its purposes and objects, the names and places of residence of the trustees, the names of the bodies which they respectively represent, and the name of the town, village or city where such building is to be located; and thereon such trustees and their successors shall be a corporation for the purposes specified in such certificate.

[L. 1892, ch 290, §§ 1, 2, 6; R. S., 8th ed. (supp.), 3529,
L. 1893, ch. 72,
L. 1895, ch. 713,
without change of substance.]

§ 8. Trustees.—The persons executing such certificate and named therein shall be the board of trustees of such corporation. If but two bodies united to form such corporation, its by-laws may prescribe the terms of office of the trustees. If more than two bodies so unite the trustees shall divide themselves by lot into three classes, so that the term of office of the first class shall expire in one year; the term of office of the second class, in two years; and the term of office of the third class in three years. On a vacancy occurring in the office of a trustee of such corporation, the body which he represented shall fill such vacancy, and the person so chosen shall hold office for three years, if chosen on the expiration of the term of his predecessor, and otherwise, until the expiration of the original term. The board of trustees may admit as members of such corporation and of such board of trus-

tees the representatives of bodies chartered or instituted by the same general governing body as any of the bodies named in such certificate, or by any superior or higher jurisdiction or governing body of the order to which any such bodies belong, and shall file in the county clerk's office a certificate showing such action. The board of trustees shall fix the term of office of the representatives so admitted at one, two or three years, and shall so apportion such new representatives that as nearly as possible the terms of office of one-third of the directors of such corporation, shall expire annually.

[L. 1892, ch. 290, §§ 3, 4; R. S., 8th ed. (supp.), 3529, without change of substance.]

§ 9. Powers.— Such corporation may acquire real property in the town, village or city in which such hall, temple or building is or is to be located, and erect such building or buildings thereupon for the uses and purposes of the corporation, as the trustees may deem necessary, or repair, rebuild or reconstruct any building or buildings that may be thereupon and furnish and complete such rooms therein as may appear necessary for the use of such bodies or for any other purpose for which the corporation is formed; and may rent to other persons any room in such building or any portion of such real property. Until such real property shall be acquired or such building erected or made ready for use, the corporation may rent and release such rooms or apartments in such town, village or city as may be suitable or convenient for the use of the bodies mentioned in such certificate, or of such other bodies as may desire to use them, and the board of trustees may determine the terms and conditions on which rooms and apartments in such building or buildings, when erected, or which may be leased, shall be used and occupied. Before such corporation shall purchase or sell any real property, or erect or repair any building or buildings thereupon, and before it shall purchase any building or part of a building for the use of a corporation, it shall submit to the

bodies constituting the corporation, the proposition to make such sale or purchase, or to erect or repair any such building or buildings, or to rent any building or part thereof, for the use of the corporation; and unless such proposition receives the approval of two-thirds of the bodies constituting the corporation, such proposition shall not be carried into effect. The evidence of the approval of such proposition by any such body shall be a certificate to that effect signed by the presiding officer and secretary of the body, or the officers discharging duties corresponding to those of a presiding officer and secretary, under the seal of such body. But where land is purchased for the purpose of erecting a hall or temple thereupon the buildings upon such land at the time of such purchase, may be sold by the trustees without such consent.

[L. 1892, ch. 290, §§ 4, 5; R. S., 8th ed. (supp.) 3530, without change of substance.]

§ 10. Mortgaging property.—If the funds of the corporation shall not be sufficient to pay for any real property purchased by the board of trustees in pursuance of law, or for the construction, repairs or rebuilding of a suitable building or buildings, and the finishing or furnishing of apartments therefor, the corporation may issue its bonds bearing interest, semi-annually, for such additional sum as may be required therefor, and may execute to any such trustee or trustees, as the board may select, a mortgage upon its real property as security for the payment of such bonds. The proceeds of such bonds shall be applied to the payment of debts of the corporation incurred by the purchase of such real property, or the construction and repair of a building or buildings thereupon or the finishing or furnishing of apartments therein. Any of the bodies specified in section seven may invest its funds in the bonds authorized by this section to be issued.

[L. 1892, ch. 290, §§ 7, 5; R. S., 8th ed. (supp.), 3531, without change of substance.]

§ 11. Laws repealed.—Of the laws enumerated in the schedule hereto annexed that portion specified in the last column is repealed.

§ 12. When to take effect.—This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

| Laws of— | Chapter. | Sections. |
|-----------|----------|-----------|
| 1866..... | 317..... | All. |
| 1869..... | 176..... | All. |
| 1871..... | 308..... | All. |
| 1873..... | 417..... | All. |
| 1885..... | 419..... | All. |
| 1888..... | 290..... | All. |
| 1892..... | 290..... | All. |
| 1893..... | 72..... | All. |
| 1895..... | 713..... | All. |

TABLE SHOWING DISPOSITION OF LAWS REPEALED.

| Laws of— | Chapter. | Sec. | R. S. 8th ed. p. | Sec. of revision. |
|----------------|----------|--------------------|---------------------|----------------------|
| 1866 | 817 | 1 | 2090 | 2. |
| | | 2, 3 | 2091 | 4. |
| | | 4 | 2091 | 3. |
| | | 5 | 2092 | 5. |
| | | 6 | 2092 | 6. |
| | | 7 | 2092 | 3. |
| | | 8 | 2092 | omitted. |
| 1869 | 176 | 1 | 2093 | 2. |
| 1871 | 308 | 1-8 | .... | 2, 3, 4, 5, 6. |
| 1873 | 417 | 1-8 | 2093-5 | 2, 3, 4, 5, 6. |
| 1885 | 419 | 1 | 2093 | 2. |
| 1888 | 290 | 1-5 | .... | 2, 3. |
| 1892 | 290 | 1-8 | 3529 | 7, 8, 9, 10. |
| 1893 | 72 | Am. 1892, ch. 290. | | |
| 1895 | 713 | Am. 1892, ch. 290. | | |

THE REAL PROPERTY LAW.

THE REAL PROPERTY LAW.

[This bill became ch. 547 of the Laws of 1896.]

REVISERS' PRELIMINARY NOTE TO THE REAL PROPERTY LAW.

In submitting this proposed revision of the statutory law of real property, we are not unmindful of the paramount importance of the work we have undertaken. Closely related as it is to the tenure of the homes of the people of this State, and their permanent locations for business purposes, we have deemed it highly essential to exercise the utmost care to prevent any encroachments on established principles, pertaining to the acquisition and transmission of title to lands. To this end, we have earnestly endeavored to preserve intact the substance of the law, as heretofore enacted, in all cases where by any possibility a change might interfere with vested rights, and as a general rule, we have only made such changes of form as seemed to us appropriate to a clearer comprehension of legislative intent, and only such changes of substance as are in conformity with well considered judicial decisions.

We have also taken care not to make any changes in the phraseology of any statute that has been the subject of judicial decision, by which the construction thereof, as established by such decision, can be affected or impaired. Nevertheless, in some instances, we have found that changes are indispensable in order to intelligibly express the meaning of the statutes, but at the end of each section we have noted the character and reasons of the change.

We have not been able to understand why the language of the written law should defy all attempts at improvement, more than the language of any other science, or upon any other subject. It must be susceptible of emendation by undergoing the process which improves every other production of human skill, and more especially, when new interests arise which it was not originally intended to embrace. But, as already suggested, whenever it was practicable and consistent with the general plan of the revision, we have preferred to retain the language of the present statutes, where they have received a settled construction. For nearly one hundred years our statutes have been the subject of professional criticism and judicial exposition. For centuries those borrowed from England have been in like manner illustrated and expounded; if at this time a knowledge of their meaning and their defects has not been attained, it probably can never be fully acquired. We have endeavored, however, to ascertain and remedy discrepancies and incongruities, so that the meaning of the law may be made apparent, not only to the members of the legal profession, but to all who are expected to comply with its requirements.

The table immediately following the schedule of laws repealed shows the corresponding disposition of the laws repealed by this chapter in the revision or elsewhere. In the course of our revision of these statutes, we have had occasion to investigate the laws of other states and nations, in relation to the rights of aliens, and, incidentally, the laws of the states as affected by national treaties, the result of which investigation appears in the following additional note:

Aliens.

The first Constitution of the State of New York, adopted on the 20th of April, 1777, provided that "such parts of the common law of England and of the statute laws of England and Great Britain, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colonies on the 19th day of April, in the year of our Lord 1775, shall be and con-

tinue the law of this State, subject to such alterations and provisions as the Legislature of this State shall, from time to time, make concerning the same." (Article 35.)

This provision of the Constitution operated to re-enact as a part of the law of New York the statute of William and Mary, which declared "the alienage of the ancestor to be no bar to a claimant of real property." This continued to be the law of the State until the 1st day of May, 1788.

L. 1788, ch. 46, last paragraph, provided that "from and after the 1st day of May (1788) none of the statutes of England or of Great Britain, shall operate or be construed as law of this State." This provision was re-enacted in L. 1828, second session, ch. 21, § 3, and now constitutes § 30 of the Statutory Construction Law.

Upon the abrogation and repeal of the statutes of England by the act of 1788 the common law alone governed the rights of aliens to take and hold land within the State. At common law, an alien could acquire a defeasible title to real property by purchase, including acquisition by devise, but could not inherit from either an alien ancestor or a citizen. With the exception of several statutes entitling aliens who became residents of this State during limited periods of time to hold real property under peculiar conditions, there was no legislation on the subject until 1825. In that year the first general act enabling resident aliens to take and hold real property within the State was passed, providing "that upon filing a deposition in the office of the Secretary of State that he is a resident in, and intends always to reside in the United States, and to become a citizen thereof as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require to enable him to obtain naturalization, an alien may take and hold lands and real estate, of any kind whatsoever, to him and his heirs and assigns forever." But the act provided that an alien should not be capable of taking or holding any lands or real estate which may have descended or been devised or conveyed to him previously to his having become such resident as aforesaid and made such affidavit or affirmation.

Under the act of 1825, therefore, an alien who had not filed the deposition as required by its provisions was unable to take by conveyance, devise or descent. The act of 1825 continued to be the law of the State until the adoption of the Revised Statutes in 1830. The Revised Statutes provided for the filing of a deposition substantially the same as that authorized by the act of 1825, and any alien who has filed such deposition may take, hold, sell, assign, mortgage, devise and dispose of real property in the same manner as a citizen, during six years from the filing thereof. Aliens who have not filed such deposition, whether resident or nonresident, are prohibited from taking real property by descent, devise or conveyance. If an alien dies while entitled to hold real property, his heirs who are inhabitants of the United States take by descent. If real property is mortgaged by an alien entitled to hold the same, he is authorized to repurchase the premises on foreclosure.

The Statute of Wills (R. S., pt. II, ch. 6, tit. I, § 4), adopted in 1830 as part of the Revised Statutes, expressly provided that "every devise or any interest in real property to a person who at the time of the death of the testator, shall be an alien, not authorized by statute to hold real estate, shall be void."

Thus, by the Revised Statutes of 1830, an alien, whether resident or nonresident, who has not filed a deposition, was unable to take real property by conveyance, devise or descent.

The laws of the State in relation to the powers of aliens to take and hold real property, was revised and extended by L. 1845, ch. 115.

It has been claimed that the act of 1845 was temporary and referred only to aliens, residents of the State in that year. Although the act (L. 1857, ch. 576,) appears to refer to the act of 1845 as temporary, it will not bear such construction, and the courts have uniformly regarded it as being of permanent force, applying equally to aliens who became residents of the State before, as well as after, its passage. (Hall v. Hall, 81 N. Y., 130, 138.)

By § 1 of the act of 1845, a resident alien is enabled to take real property within this State by conveyance or devise, and to hold

the same upon filing the deposition required by law. This section superseded the provisions of the Revised Statutes, including the Statute of Wills, which prohibited an alien who had not filed a deposition, from taking by conveyance or devise.

Sections 4 and 5 of the act of 1845, as amended by L. 1875, ch. 38, authorized the persons answering to the description of heirs of an alien resident or citizen, or being his devisee, and of his blood, to take his real property as heirs or devisees, but if alien males, required by filing of a deposition in order to hold the same.

The section appears to permit alien women to take real property within the State by devise or descent, and to hold the same without filing a deposition. The act does not confer upon non-resident aliens, certainly not upon nonresident male aliens, any power to hold real property within the State.

Section 2 of the act of 1845, gives to the widow of a resident alien, whether she be an alien or citizen of the United States, dower in his real property.

Section 7 and 8 of the act of 1845 authorize a woman who is an alien resident, to take real property by devise, or an estate or interest in real property by way of marriage settlement, created by the will of her husband or by any person capable of devising real property.

Section 5 of the proposed revision confers upon resident aliens as broad powers in reference to taking and holding real property, as are provided by the act of 1845. Aliens are authorized to take real property by devise or descent, the same as citizens, but in order to hold it are required to file a deposition within one year after the death of the decedent, or if minors, within one year after majority. The widow of an alien is entitled to dower in his real property, but can only obtain admeasurement of the same upon the filing of a deposition, as required by law.

By the terms of this section, if property is devised or descends to a nonresident alien, he is unable to hold the same without becoming a resident of the United States, and filing the deposition required by law; and the intention of becoming a resident and citizen, whether the property passes to a resident or nonresident,

or a man or a woman, is made the test of the right to hold the same.

The commissioners believe that with the exception contained in section 6, allowing a woman who marries a foreigner and resides in a foreign country to take real property and transmit it to her heirs, the State of New York has conferred as broad powers upon aliens as are desirable at the present time. They have therefore omitted from the revision, and repealed without re-enactment, chapter 207 of the Laws of 1893, which permitted the alien heirs or devisees of a citizen, whether such heirs or devisees are residents or nonresidents, and without filing any deposition, to take and hold his real property. If the revision becomes a law, nonresident aliens with the exception contained in section 6, and as their rights may be extended by treaties of the United States with foreign governments, will be unable to take and hold real property within the State. This, it is believed, affects no substantial change in the general policy of the State (which, until 1893, seems to have uniformly required residence and the filing of a deposition, in order to entitle an alien to hold real property within the State. It is believed that the tendency of modern legislation in this country is to restrict the holding of real property by aliens, to such as are residents of the United States.

The following synopsis of laws of the several States in relation to the power of aliens to hold real property will be interesting as indicating the present tendency of legislation in this country:

ALABAMA.— Constitution, article I, § 36. “ Foreigners, who are or may hereafter become bona fide residents of this State, shall enjoy the same right in respect to the possession, enjoyment and inheritance of property, as native born citizens.”

Alabama code (1886), § 1914. “ An alien resident or nonresident may take and hold property, real and personal, in this State, either by purchase, descent or devise, and may dispose of and transmit the same by sale, descent or devise as a native citizen.”

ARKANSAS.— Constitution, article 2, § 20. “ No distinction shall ever be made by law between resident aliens and citizens in regard to the possession, enjoyment or descent of property.”

Revised Statutes (1884), chapter 3, §§ 232-34. (L. 1874, Doc. 15.) All distinctions between aliens and citizens as to the holding, transmission or descent of real property are abolished and their personal property is to be distributed the same as the property of a citizen.

CALIFORNIA.—Constitution (1879), article 1, § 17. “Foreigners of the white race or of the African descent, eligible to become citizens of the United State under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission and inheritance of property, as native born citizens.”

Civil Code, §§ 671, 672. “Any person, whether a citizen or alien, may take, hold and dispose of property, real and personal, within the State.” “If a nonresident alien takes by succession, he must appear and claim the property within five years from the time of succession or be barred.”

§ 1404. By this section aliens are enabled to take by succession the same as citizens.

COLORADO.—Constitution (1876), article 2, § 27. “Aliens who are or may hereafter become bona fide residents of this State, may acquire, inherit, possess, enjoy and dispose of property, real and personal, as native born citizens.”

Mills Annotated Statutes (1891), chapter 3, § 99. (L. 1861, p. 57, as am. by L. 1883, p. 132.) By this section all distinctions between aliens and citizens abolished.

§ 100. (L. 1887, p. 24, as am. by L. 1889, p. 272.) Nonresident aliens are prohibited from acquiring more than two thousand acres of agricultural land.

§ 1529. “The alienage of the descendants shall not invalidate any title to real estate which shall descend from him or her.”

CONNECTICUT.—General Statutes (1888), § 15. Resident aliens of the United States and citizens of France, so long as France shall accord the same right to citizens of the United

States, may purchase, hold, inherit or transmit real estate in as full a manner as native born citizens. The wife of such alien or citizen may take and hold real estate by devise or inheritance and be entitled to dower. Lineal descendants may take and hold as heirs-at-law.

Alien nonresidents authorized to acquire and hold quarrying or mining property, and transmit the same by conveyance, devise, or inheritance, but a nonresident alien shall not acquire greater rights than his grantor, etc.

DELAWARE.—Revised Code (1852), amended in 1893, title 12, ch. 81, § 1. An alien residing within the State who has declared his intention of becoming a citizen, may hold and transmit property and his resident heirs or devisees may take the same if they reside within the United States. Nonresident aliens are prohibited from holding real property.

FLORIDA.—Constitution (1885); Declaration of Rights. § 18. "Foreigners shall have the same rights as to the ownership, inheritance and disposition of property in this State as citizens of the State.

Digest of Laws (1881), ch. 92, § 7. "Aliens of any country or nation whatever, may purchase, hold, enjoy, sell, convey or devise any lands or tenements in the State to the same extent and with the same right as citizens of the United States." § 14. Aliens as well as citizens may take by inheritance, and shall be entitled to share and share alike.

GEORGIA.—Code of Georgia, § 1661. "Aliens or subjects of governments at peace with the United States and this State, shall be entitled to all the rights of citizens of other States resident in this State and shall have the privilege of purchasing, holding and conveying real estate in this State."

IDAHO.—Revised Statutes (1887), § 2827. "Any person, whether a citizen or alien, may take, hold and dispose of property, real or personal." § 5715. Resident aliens may take in all cases by succession as citizens, but no nonresident foreigner can

take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

By the act of 1891, February 26, persons who are not citizens or who have not declared their intention to become such, and corporations, except railroad corporations, whose members are not exclusively citizens, or persons who have declared their intention of becoming citizens, are prohibited from acquiring any land or title thereto or interest therein, other than mineral lands or such as may be necessary for the actual working of mines and the reduction of the products thereof, but liens may be enforced by foreclosure, and widows or heirs may take by inheritance, but all lands so acquired shall be sold within five years after the title thereto shall be perfected in such sale.

ILLINOIS.—By a law approved February 17, 1851, all distinctions between aliens and citizens were abolished, but by a law passed in 1887, approved June 16, as am. by Laws of 1891, approved June 19, the act of 1851 is repealed, and nonresident aliens are prohibited from taking or holding real property; except that the heirs of aliens who hold property at the time of the enactment of the law, may hold for three years; if under twenty-one, for the term of five years, during which time they must dispose of the same or become actual residents of the State or declare their intention of becoming citizens. Resident aliens, who have declared their intention of becoming citizens are entitled to hold, sell, assign, mortgage, devise and dispose of real property for six years after such declaration. Resident alien females are entitled to hold without filing and declaring an intention of becoming citizens.

INDIANA.—Revised Statutes (1894), § 3328 (L. 1861), provides that no person except a citizen or an alien who is a bona fide resident, shall take, hold, convey, devise or pass by descent, lands except in such case of descent or devise as are provided for by law. § 3389 (L. 1881). “Natural persons who are aliens, whether they reside in the United States or in foreign countries, may acquire, hold and enjoy real estate, and make, convey, devise,

mortgage or otherwise incumber the same in like manner and with the same effect as citizens of this State." §§ 3332-34 (L. 1885). Resident aliens who have declared their intention to become citizens, only are entitled to acquire and hold real estate in the same manner as citizens. Other aliens may take and hold lands by devise and descent only, and may convey the same at any time within five years thereafter, and no longer, and all lands so left and remaining unconveyed at the end of five years shall escheat to the State.

IOWA.— Constitution (1857), article 1, § 22. "Foreigners who are or may hereafter become residents of this State, shall enjoy the same rights, in respect to the possession, enjoyment and descent of property, as native born citizens." Section 1908 of the code of 1873, provided that nonresident aliens should enjoy the same property rights as resident aliens, but this section is repealed by Laws of 1888, chapter 85. By this act resident aliens are accorded the same rights as citizens. Nonresident aliens are prohibited from acquiring real property by descent, devise or purchase, but the widow or heirs of aliens who have heretofore acquired property are entitled to take and hold the same for a period of ten years. Nonresident aliens are, however, authorized to hold not to exceed three hundred and twenty acres of land or city property to the value of ten thousand dollars, provided, that within five years from the date of purchase the same is placed in the hands of a relative of such alien who is an actual occupant of the land and becomes a naturalized citizen within ten years from the date of the purchase of such land.

KANSAS.— Constitution (1859), article 1, § 17, provided that no distinction should be made between citizens and aliens in reference to the purchase, enjoyment or descent of property, but this section was amended in 1888, by providing that "The rights of aliens in reference to the purchase, enjoyment or descent of property may be regulated by law." In pursuance of this constitutional provision the legislature enacted (L. 1891, ch. 3), that,

“Non-resident aliens and corporations of foreign countries are declared to be incapable of acquiring title to, or taking or holding any lands or real estate in this State by descent, devise, purchase or otherwise, except that the heirs of aliens who have heretofore acquired land in this State under the laws thereof, and the heirs of aliens who may acquire lands under the provisions of this act, may take such land by devise or descent and hold the same for the space of three years; or, if under twenty-one, for the space of five years. Corporations, more than twenty per centum of the stock of which is owned by aliens, are prohibited from acquiring, holding or owning real estate in the State of Kansas. Resident aliens, on filing declaration of intention of becoming citizens, may acquire real property for a term of six years after filing such declaration. Females are not required to file declaration of intention of becoming citizens.

KENTUCKY.—By Laws of 1874, February 23, all disabilities of aliens, whether resident or nonresident, were removed, but since that time a change of policy has been made.

Kentucky Statutes (1894), § 334. Resident aliens who have declared their intention of becoming citizens, are enabled to take, hold and transmit by inheritance or otherwise, real property the same as citizens. Aliens who have not declared intention, may hold for a term of twenty-one years. If real estate passes to a nonresident alien, by descent or devise, the nonresident alien has eight years in which to dispose of the same.

LOUISIANA.—The common law never prevailed in Louisiana, and therefor the disability of alienage as to the ownership of real property was unknown to its laws. It was, however, the policy of the State to impose a heavy succession tax upon all property passing by devise or descent to a nonresident alien. This succession tax law was, however, repealed in 1877, and since that time all disability of aliens as to holding of real property in the State seems to have been removed.

MAINE.— Revised Statutes (1883), chapter 73, § 2. “An alien may take, hold, convey and devise real estate or any interest therein. All conveyances or devises of such estate or interest already made by or to an alien are valid.”

MARYLAND.— Public General Laws, article 3, p. 9 (L. 1874), chapter 354. “Aliens not enemies, may take and hold lands, tenements and hereditaments acquired by purchase, or to which they would, if citizens, be entitled by this act; may sell, devise or dispose of the same, or transmit the same to their heirs as fully and effectually and in the same manner, as if by birth they were citizens of this State.”

MASSACHUSETTS.— Public Statutes (1882), ch. 126, § 1. “Aliens may hold, transmit and convey real estate, and no title to real estate shall be invalid on account of the alienage of a former owner.”

MICHIGAN.— Constitution, article 18, § 13. “Aliens who are or who may hereafter become, bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property, as native born citizens.”

Howell's Annotated Statutes (1882), § 5775. “An alien may acquire and hold lands or any right thereto or interest therein by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate the same shall descend to his heirs; but in all cases such lands shall be held, conveyed, mortgaged or devised, and shall descend in like manner and with like effect as if such alien were a native citizen of this State, or of the United States.”

MINNESOTA.— Statutes of Minnesota (1891), § 5410. “Aliens may take, hold, transmit and convey real estate; and no title to real estate shall be invalid on account of the alienage of any former owner.” But this section is qualified by chapter 204 of the Laws of 1887, as am. by L. 1889, ch. 113, which provided that it shall be unlawful for any person or persons not citizens of the

United States, or who have not lawfully declared their intention of becoming such citizens, or any corporation of a foreign country, to hereafter acquire, hold or own real estate so hereafter acquired or any interest therein in this State, except such as may be acquired by devise or inheritance, or in good faith in the ordinary course of justice in the collection of debts hereafter created, or such as may be held as security for indebtedness heretofore or hereafter created. Rights secured by treaties of the United States are preserved. Actual settlers, upon farms, although aliens, are entitled to hold one hundred and sixty acres. Aliens are allowed to hold small city lots.

Corporations, more than twenty per centum of the stock of which is held by aliens, are prohibited from taking or holding real estate within the State. Titles are not to be affected by alienage of former owners.

MISSISSIPPI.—The Constitution of 1868, article 2, § 1, provided that “No distinction shall ever be made by law between citizens and alien friends in reference to the possession, enjoyment, and descent of property.

The Constitution of 1890, article 4, § 84, provided that “The legislature shall enact laws to limit, restrict or prevent the acquiring and holding of land in this State by nonresident aliens.”

In conformity with the Constitution of 1890, the Annotated Code of 1892, § 2439, provides that “Resident aliens may acquire and hold land and may dispose of it and transmit it by descent, as citizens of the State; but nonresident aliens shall not hereafter acquire or hold land.” Nonresident aliens may force liens on real property by acquiring the property, and may hold the same for twenty years, but must within that time dispose of the same to a citizen or other person capable of holding real property within the State. Title to real estate in the name of a citizen of the United States or a person who has declared his intention of becoming a citizen, whether resident or nonresident, is not to be affected by alienage of former owner.”

MISSOURI.—The Revised Statutes (1889), ch. 4, § 342 (re-enacting § 325 of the Revised Statutes of 1879), provided, that “Aliens shall be capable of acquiring by purchase, devise or descent, real estate in this State, and of holding, devising or alienating the same, and shall incur the like duties and liabilities in relation thereto, as if they were citizens of the United States and residents of this State.

But in 1895 (Laws of 1895, p. 207), the Legislature enacted, “It shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention of becoming such citizen, or for a corporation of a foreign country to hereafter acquire, hold or own real estate so hereafter acquired, or any interest therein, in this State, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts.” The treaty rights are saved. Corporations, more than twenty per centum of the stock of which is held by aliens, are prohibited from holding lands within the State.

MONTANA.—Constitution (1889), article 3, § 25. Aliens and denizens shall have the same rights as citizens in respect to acquiring, purchasing, passing enjoying, conveying, transmitting and inheriting mining property.

There appears to be no legislative enactment on the subject.

NEBRASKA.—Constitution (1875), article 1, § 25. “No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment or descent of property.”

Prior to 1889, nonresident aliens were accorded the same rights as resident aliens, but the Consolidated Statutes (1891), § 4396 (L. 1889, p. 483), provides as follows: “Nonresident aliens and corporations not incorporated under the laws of the State of Nebraska, are hereby prohibited from acquiring title to, or taking or holding any lands or real estate in this State by descent, devise, purchase or otherwise. Where the descent of lands

already held by aliens in pursuance of law is cast on nonresident aliens, or such lands are devised, they are given ten years in which to dispose of the property before escheat."

NEVADA.—Constitution (1864), article 1, § 16. "Foreigners who are, or who may hereafter become, bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens."

General Statutes (1885), § 2655. "Any nonresident alien person or corporation, except subjects of the Chinese empire, may take, hold and enjoy any real property or any interest in lands, tenements or hereditaments within the State of Nevada as fully, freely and upon the same terms and conditions, as any resident citizen, person or domestic corporation." The statute of eminent domain is granted to nonresident or foreign corporations.

NEW HAMPSHIRE.—Public Statutes of New Hampshire (1891), ch. 137, § 16. "An alien resident of this State may take, purchase, hold, convey or devise real estate; and it may descend in the same manner as if he were a native citizen."

NEW JERSEY.—Revision of New Jersey (1877), p. 6. By an act of 1886, alien friends are empowered to hold land within the State, in the same manner as native born citizens, and their heirs and devisee take in the same manner as citizens.

NEW YORK.—See preceding portion of this note.

NORTH CAROLINA.—Code (1883), § 7, (L. of 1870-71, ch 255). "It shall be lawful for aliens to take, both by purchase and descent or other operation of law, any lands, tenements or hereditaments, and to hold and convey the same as fully as citizens of this State can or may do, any law or usage to the contrary notwithstanding."

NORTH DAKOTA.—The laws of the territory of Dakota were continued in force in the State of North Dakota by the act of congress of 1889, February 22, admitting the State into the Union.

The compiled laws of Dakota (1887), § 2686, provided, "Any person, whether a citizen or an alien, may take, hold and dispose of property, real or personal within this State."

§ 3417. "Aliens may take in all cases by succession as well as citizens, and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative."

These sections of the compiled laws of the territory of Dakota become the laws of North Dakota, if they were in force at the time of its admission in 1889. Prior to that date in 1887, March 3, congress passed a law prohibiting nonresident aliens from acquiring property within the territories of the United States except by inheritance or in the course of the collection of debts. This law would seem to supersede section 2686 of the compiled laws of Dakota. Section 3417 does not seem to be inconsistent with its provisions.

OHIO.—Revised Statutes (1894), § 4173. "No person who is capable of inheriting shall be deprived of the inheritance by reason of any of his or her ancestors having been aliens, and aliens may hold, possess and enjoy lands, tenements and hereditaments within this State either by descent, devise, gift or purchase as fully and effectually as any citizen of the United States or of this State can do."

OREGON.—Constitution, article 1, § 31. "White foreigners who are or may hereafter become residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and descent of property as native born citizens."

Annotated laws of Oregon (1887), § 2988, being an act of October 4, 1872. "Any alien may acquire and hold land, or any right thereto, or interest therein, by purchase, devise or descent, and he may mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in

like manner and with like effect, as if such alien were a native citizen of this State, or of the United States."

PENNSYLVANIA.—The legislation of this State is confused and unsatisfactory. The laws on the subject are collated in Brightley's Purdon's Digest (1894, p 91). An act of 1791, February 23, provided that "Every person being a citizen or subject of any foreign State, shall be able and capable in law of acquiring and taking by devise or descent, lands or other real property in this commonwealth and of holding and disposing of the same in as full and ample a manner as a citizen of this State may or can do." It was held by the Supreme Court of Pennsylvania that this section did not authorize inheritance from an alien ancestor. (*Rubeck v. Gardner*, 7 Watts, 455.) An act of 1807, February 10, authorized resident aliens who have declared their intention of becoming citizens to acquire and hold not to exceed five hundred acres of land. An act of 1861, May 1, allows aliens to purchase and hold not more than five thousand acres of land, the annual income of which does not exceed twenty thousand dollars.

RHODE ISLAND.—Public Statutes (1882), ch. 172, § 6. "Aliens may take, hold, convey and transmit title to real estate and may sue and recover possession of the same in the same way and with the same effect as if they were native born citizens of the United States."

SOUTH CAROLINA.—Laws 1872, February 27. "Real and personal property of every description may be taken, acquired, held and disposed of, by an alien in the same manner in all respects as by a natural born citizen; and a title to real and personal property of every description may be derived through, from or in succession of an alien, in the same manner in all respects as through, from or in succession of a natural born citizen." L. 1873, November 19, provides that the act of 1872 shall be held to include corporations.

SOUTH DAKOTA.— See North Dakota. The law is the same in each State. An act of 1890, February 6, re-enacts all laws of the territory of Dakota in force at the time of the admission of South Dakota as a State.

TENNESSEE.— Code (1884), § 2804-ff, (L. 1875, ch. 282). “An alien resident or nonresident may take and hold property, real or personal, in this State, either by purchase, descent or devise, and dispose of and transmit the same by sale, descent or devise as a native citizen; and in all cases where aliens, resident or nonresident, have heretofore acquired title to property, real or personal, in this State in a lawful manner, the said aliens, their assigns, heirs, devisees or representatives shall hold and dispose of the same in the same manner as native citizens.”

“The heir or heirs of an alien, whether resident or nonresident, in the United States may take any lands so held by descent or otherwise, as citizens of the United States.

“Any alien to whom property, personal or real, shall descend under the provisions of this chapter, shall have the right to hold, sell, alienate and convey the same in as full and ample a manner as if he or she were a citizen of the United States.”

TEXAS.— Civil Statutes (1889), title 3, article 9. “An alien shall have and enjoy in the State of Texas such rights as are, or shall be, granted to citizens of the United States by the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States.” (L. 1854, February 13), article 10. “Any alien who shall become a resident of this State and shall, in conformity with the naturalization laws of the United States, have declared his intention to become a citizen of the United States, shall have the right to acquire and hold real property in this State in the same manner as if he were a citizen of the United States.”

Article 1658. “In making title to land by descent, it shall be no bar to a party that any ancestor, through whom he derives his descent from the intestate, is or hath been an alien, and every

alien to whom any land may be devised or may descend, shall have nine years to become a citizen of the State and take possession of such land, or shall have nine years to sell the same; provided, that an alien may take and hold by devise or descent in Texas in the same manner in which citizens of the United States can take and hold by devise or descent in the country of such alien."

UTAH.—Compiled Laws of 1888, § 2758. Resident aliens may hold in all cases by succession as citizens, but no nonresident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent.

VERMONT.—Constitution, ch. 2, § 39, provides that "Every person who comes to settle in the State, having taken an oath of allegiance, may purchase, hold and transfer land, and after one year's residence shall be deemed a free denizen," but in the case of the *State v. Boston, Concord & Montreal R. R. Co.*, 25 Vt. 435, the court held that there was no prohibition in the Constitution against aliens holding real property; that escheat of land to the sovereign in consequence of a conveyance to an alien is a result of purely feudal character, which does not exist in Vermont. The law of Vermont may be said to be that aliens whether they have taken the oath of allegiance to the State, and settled within it, or not, may hold real property with the same rights as citizens.

VIRGINIA.—Code, § 43 (1872, ch. 187, § 1), "Any alien not an enemy may acquire by purchase or descent and hold real estate in the State, and the same shall be transmitted in the same manner as real estate held by citizens."

WASHINGTON.—Constitution, article 2, § 33. "The ownership of lands by aliens other than those who, in good faith, have declared their intention to become citizens of the United States, is prohibited in this State, except where acquired by inheritance under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter

made to any alien, directly or in trust for such alien shall be void; provided, that the provisions of this section shall not apply to lands containing valuable deposits of minerals, metal, iron, coal or fire-clay, and the necessary lands for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purpose of this prohibition."

The act of Congress admitting Washington as a State continued the laws of the territory in force at the time of admission. Section 2955 of the General Statutes of the territory of Washington (L. 1886, January 29), removed all disability of alienage within the territory. This act was probably superseded so far as nonresident aliens are concerned by the act of Congress of 1887, approved March 3, which prohibited nonresident aliens from taking real property within the territories of the United States, except by inheritance. As to resident aliens, it is probably still in force and should be construed in connection with the constitutional provisions.

L. 1895, ch. 111, confirms to present holders the title to all lands conveyed to, or acquired by, aliens prior to the adoption of the constitution.

WEST VIRGINIA.—Article 2, § 5. "No distinction shall be made between resident aliens and citizens, as to acquisition, tenure, disposition or descent of property."

Code of West Virginia (1891), chapter 70. "An alien not an enemy may take and hold by inheritance or purchase, real estate within this State, as if he were a citizen of the State. Any such alien may convey or devise any real estate held by him, and if he die intestate, it shall descend to his heirs-at-law; and any such alien, devisee or heir whether a citizen or an alien may take under such alienation, devise or descent."

WISCONSIN.—Constitution, article I, § 15. "No distinction shall ever be made by law between resident aliens and citizens in reference to the possession, enjoyment or descent of property."

Section 2200 of the Annotated Statutes, being a re-enactment of the Revised Statutes of 1849, ch. 62, § 35, abolished all distinctions between aliens and citizens. This act was superseded in part by Annotated Statutes (1889), § 2200-a, (L. 1887, ch. 479, § 1), "It shall be unlawful for any alien not a resident of this State or of the United States, or for any corporation not created by or under the laws of the United States, or of some State or territory of the United States, to hereafter acquire, hold or own more than three hundred and twenty acres of land in this State or any interest therein, except such as may be acquired by devise, inheritance or in good faith in the course of justice in the collection of debts heretofore created."

§ 2. No corporation or association more than twenty per centum of the stock of which is or may be owned by any person, corporation or association who are alien nonresidents in this State or of the United States, shall hereafter acquire, hold or own more than three hundred and twenty acres of land in this State or any interest therein, except such as may be acquired in good faith in the course of justice in the collection of debts."

WYOMING.— Constitution, article I, § 29. "No distinction shall ever be made by law between resident aliens and citizens as to the possession, taxation, enjoyment and descent of property."

Revised Statutes of Wyoming, § 2226 (L. 1876, ch. 42). The alienage of the descendant shall not invalidate any title to real estate which shall descend from him or her.

Prior to the time Wyoming became a State, this was as far as the Legislature could go in conferring powers upon aliens. There has been no legislation on the subject since the adoption of the Constitution.

DISTRICT OF COLUMBIA AND TERRITORIES.—An act of Congress of 1887, approved March 3, provides as follows: "It shall be unlawful for any person or persons, not citizens of the

United States or who have not lawfully declared their intention to become such a citizen, or for any corporation not created by or under the laws of the United States, or of some State or territory of the United States, to hereafter acquire, hold or own real estate so hereafter acquired or any interest therein, in any of the territories of the United States, or in the District of Columbia, except such as may be acquired by inheritance, or in good faith in the ordinary course of justice in the collection of debts heretofore created; provided, that the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they may exist by force of any such treaty, shall continue to exist so long as such treaties are in force and no longer. No corporation or association, more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in any of the territories of the United States or the District of Columbia."

RECAPITULATION.— In twenty-one States, all, or practically all, distinction between the rights of aliens and citizens has been abolished. It will be observed that in most of these States, the statutes or constitutional provision on the subject was enacted prior to 1885. In eighteen of the States all distinction between resident aliens and citizens is abolished, but nonresident aliens, or those who have not declared their intention of becoming citizens, are prohibited from holding real property within the State. They are, however, in most cases given the power to take the same by succession, provided the property is transferred within a limited period of time to a person capable of holding the same, or provided that within such time they become qualified to hold the property themselves. Corporations, more than twenty per centum of the stock of which is held by aliens, are prohibited from acquiring real property within the State. Nearly all of the

legislation on this subject in these States is of a very recent date, superseding in many instances provisions of constitutions and statutes which were much more liberal in terms. These later statutes are uniform, and may be said to indicate the present policy of this country to restrict the holding of real property to citizens and alien residents who have declared their intention of becoming citizens. In several States, notably those recently admitted to statehood, the legislation is unsatisfactory, but the general tendency of the country is revealed in the recent legislation of States like Illinois, Idaho, Indiana, Iowa, Kansas, Minnesota, Mississippi, Missouri, Nebraska, Washington and Wisconsin, in all of which the legislation on the subject was enacted since 1885.

Laws of Foreign Countries.

ARGENTINE REPUBLIC.—Constitution, chapter 1, article 20. "Aliens shall enjoy in the territory of the nation the same civil rights as the citizens; they shall be allowed to engage in industrial, commercial and professional occupations; to own, hold and sell real estate; to navigate the rivers and travel along the coast; to practice freely their religion; to dispose by will of their property, and to contract marriage according to the laws. They are not bound to become citizens, nor to pay forced extraordinary taxes. They can obtain naturalization by residing two consecutive years in the republic; but this period of time can be shortened upon application and sufficient proof that the applicant has rendered services to the republic."

AUSTRIA.—Section thirty-three of the Austrian Civil Code provides that: "Foreigners enjoy the same civil rights and are subject to the same duties as citizens, except when the condition of citizenship is especially demanded for the enjoyment of a certain right. Foreigners must, in doubtful cases, however, in order to enjoy equal rights with citizens, prove that in regard to the law in question, Austrians enjoy the same rights in their country as do the citizens."

BELGIUM.—By an act of 1865, April 27, the *droit d'aubaine* was abolished in Belgium, and foreigners were declared capable of succeeding, disposing and receiving. (*Principes De Droit Civil* by F. Laurent, p. 539.)

CANADA.—The Revised Statutes of Canada (1886), ch. 113, § 3, provide that: “Real and personal property of any description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural born British subject; and a title to real and personal property of any description may be derived through, from or in succession to an alien, in the same manner in all respects as through, from or in succession to a natural born British subject.”

COSTA RICA.—Constitution, article 12. “Foreigners enjoy every civil right.”

ENGLAND.—A law of 33 Victoria (1870), ch. 14, § 2, provides that: “Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner, in all respects, as by a natural born British subject, and a title to real and personal property of every description may be derived through, from or in succession to an alien, in the same manner in all respects, as through, from or in succession to a natural born subject.”

FRANCE.—The *droit d'aubaine*, which obtained in France prior to the revolution of 1789, was a principle of the feudal law by which the estate of a foreigner who died in France was appropriated by the lord. The *droit d'aubaine* originally imposed upon foreigners a double incapacity, both of transmitting and succeeding to property. At a later period, however, it came to mean the incapacity of succeeding only, and a foreigner dying in France leaving subject heirs might transmit his property to them by testament, and they could succeed to his estates in the same manner as the heirs of a subject. Such was the condition of foreigners in France when the Constituent Assembly, on the 6th of

August, 1790, unanimously abolished the droit d'aubaine, "Considering," said the illustrious Assembly, "that the droit d'aubaine is inconsistent with the principle of fraternity which ought to unite all men whatever their country or government; that the droit d'aubaine, established in a barbarous age, ought to be proscribed among a people which has founded its constitution on the rights of man and of the citizen, and that France liberated ought to open its bosom to all the peoples of the world, by inviting them to enjoy, under a free government, the sacred and inviolable rights of humanity." A second decree of the 8th of April, 1791, gave to foreigners the right of disposing of their goods by every means which the law authorized, and permitted them to receive successions left in France by their relatives, whether foreigners or French. (Principes De Droit Civil, by F. Laurent, vol, 1, p. 535.)

The Assembly had hoped that other nations would follow its example and abolish the droit d'aubaine. This hope was not realized, and upon its adoption the Code Napoleon re-enacted, to some extent, at least, the droit d'aubaine.

Article 11 of the Code provided that "An alien shall enjoy in France the same civil rights as those granted to French people by the treaties of the nation to which such alien belongs."

Article 726 prohibited an alien from inheriting property which his French or foreign relative owned in the territory of the kingdom, except as such right may be acquired by article 2 and article 912, provided that "One can not dispose in favor of an alien unless the latter can dispose in favor of a Frenchman." Articles 726 and 912 were repealed in 1819. The discussion of the rights of aliens in relation to real property by French law writers refers to the code before 1819. The writers have generally admitted that article 11 only referred to civil rights as distinguished from the natural rights of man, and while denying civil rights to foreigners except in cases of reciprocal relations, did not deny to them natural rights. Other writers have contended that under the article, aliens were entitled to all the civil rights which were not denied by the laws of France, and

that such of them as were denied might be acquired by treaty relations. As to what constitutes natural and civil rights there is considerable conflict of opinion. In relation to the holding of real property, it is pretty generally admitted that an alien by natural right can acquire property (except by succession) and exchange and sell the same. (*Principes De Droit*, by F. Laurent, p. 522.) But, as to whether he might acquire the same by testament, donation, or inter vivos, there is considerable doubt. Laurent states that acquisition by testament or donation is not a civil right. (*Id.*, p. 542.) Moulon states that the right of acquiring or transmitting by donation is a natural right, of which aliens were not deprived by article 11. (*Moulon's Repetitions sur le Code Civil*, vol. 1, p. 74.) Demolombe contends that the Code Napoleon did not prohibit transmission by inheritance to a subject of France, since article 726 only declared an alien incapable of succeeding, and that an alien might dispose by donation inter vivos and by will, since article 912 only declared an alien incapable of receiving. (*Demolombe's Code Napoleon*, vol. 1, p. 372.) But in this latter contention he does not appear to have been followed by other commentators on the law. Article 3 of the code impliedly recognizes the right of foreigners to own real estate in France, but does not give to them the right of disposing by donation or will. Laurent, in his great work on the civil law, is of the opinion that under the Code Napoleon the right of disposing of property by testament or donation was not possessed by foreigners.

All discussion on the subject seems to be settled by an act of July 14, 1819, which repealed article 726 and 912 of the Code Napoleon, and all incapacity of aliens to hold and dispose of real property in France seems to have been swept away, aliens being declared capable of succeeding, of disposing and of receiving in the same manner as Frenchmen in all the territories of the kingdom. (*Principes De Droit Civil*, by F. Laurent, Vol. I, p. 538; *Demolombe's Code Napoleon*, Vol. I, 369; Borleux's "*Commentaire sur de Code Napoleon*," Vol. I, p. 54.)

While under article 11, aliens may still be denied in France all other civil rights not acquired by treaty, the civil rights in relation to real property are accorded by the laws of 1819, and with the exception contained in article 2 of that act, aliens to-day enjoy in France substantially all the rights enjoyed by Frenchmen in relation to holding and disposing of real property. The principle of reciprocal relation is, to some extent, preserved by section 2 of the act of 1819, which provides that in the case of the division of the same succession by co-heirs, alien and French, the latter shall be entitled to levy upon the goods in France, a portion equal to the value of the goods situated in a foreign country of which they will be deprived by virtue of the local laws or customs.

Demolombe contends that this provision means that a Frenchman shall only be entitled to levy upon goods in France when he is deprived of property in a foreign country by the laws thereof as a Frenchman. Thus if a man dies leaving ten thousand dollars worth of real property in France and ten thousand dollars worth of real property in a foreign country, and has for heirs his father and brother, the Code Napoleon accords to the father a quarter and to the brother three-quarters of the succession (Art. 749). Suppose that the foreign law accords to each of them one-half, the father thus being entitled to five thousand of the ten thousand dollars worth of property situated in a foreign country, the brother would not be entitled to claim that the father, having received a quarter of the entire estate, would not be entitled to any portion of the estate in France.

Demolombe argues that this would raise an interminable conflict between the statutes of the two countries. If the foreign law entitled the father to one-half the estate, it should in the supposed case reciprocally provide that he should have the entire property situated in a foreign country, that is to say, ten thousand dollars. He concludes that the property in a foreign country and the property in France constitutes two distinct estates, and unless the brother is deprived of some portion of the estate situated in a foreign country, as a Frenchman, he will not be

entitled to levy upon the father's portion of the estate in France. (Demolombe's Code Napoleon, p. 103.)

GERMANY.— There appears to be no imperial legislation applying to the entire German empire in relation to the rights of aliens to take and hold real property. The laws of the various states and principalities which together constitute the empire vary, but for the most part tend to the abolition of all distinctions as to the rights of alien friends, reserving, however, to the government the right to prescribe a different rule by the way of retaliation.

GREECE.— L. 1890, article 13. "An alien enjoys the same civil rights in Greece as does a Greek, except when modified by treaties."

HONDURAS.— Constitution, chapter 3, article 13. "No foreigner is more privileged than another. All shall enjoy the civil rights of Honduraneans. Consequently they are permitted to buy, sell, locate, exercise industries or professions; to own all kinds of property and to dispose of them in the form prescribed by law."

ITALY.— L. 1891, § 53. "An alien is permitted to enjoy civil rights enjoyed by citizens."

ROUMANIA.— Civil Code, article 11. "Aliens in Roumania enjoy the same civil rights as Roumanians enjoy, except in cases where the law prescribes otherwise."

SPAIN.— Civil Code, article 27. "Foreigners enjoy in Spain the rights that the civil law concedes to Spaniards, saving what is provided in article two of the constitution of the state, or in international treaties."

Article two of the constitution does not affect the holding of real property.

UNITED STATES OF COLUMBIA.— Constitution, title 2, article 11. “ Foreigners shall enjoy in Columbia the same rights that are conceded to Columbians by the laws of the nation to which the foreigner belongs, except those which are stipulated in public treaties.”

VENEZUELA.— Constitution, title 1, article 10. “ Foreigners shall enjoy the same civil rights as Venezuelans, and the same security in their persons and property. They can only take advantage of diplomatic means in accordance with public treaties and in cases where right permits it.”

The Treaty-making Powers.

The Constitution of the United States vests in the president, by and with the advice and consent of the Senate, the power of making treaties, and section two of article six provides that: “ All treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” To what extent the national government through the treaty making power conferred by the Constitution can modify or supersede the laws concerning private rights of a particular State, thus accomplishing indirectly, what it can not accomplish directly by an act of Congress, is a question of great interest and importance.

Many treaties contain provisions in relation to the holding and disposition of real property by aliens which are inconsistent with the laws of the individual States, and if upheld, must be deemed to supersede or modify them. If treaty provisions in relation to the holding of real property by aliens, are to be deemed of force not only in the territories but in the States of the Union, then the statutes of a State reveal only in part the rights of aliens within its territory, and reference must be had to the treaties of the national government in order to determine them.

The question of the supremacy of a treaty as affecting matters of State jurisdiction concerning which Congress has no power to legislate, has been before the Supreme Court of the United States in several cases. In the case of *Ware v. Hylton*, 3 Dallas, p. 199,

decided in 1796, the Supreme Court held that a law of Virginia which provided for the confiscation of debts due to British creditors, although within the power of the State of Virginia at the time of its passage, was superseded by the treaty of 1783, with Great Britain, which granted to British creditors the recovery of debts incurred before the treaty was made. The supremacy of the treaty over the State law was sustained, and the court held that Virginia, by becoming a State of the Union, had vested in the national government the treaty making power.

Chief Justice Chase said: "A treaty can not be the supreme law of the land, that is, of all the United States, if any act of a State legislature can stand in its way. If the constitution of a State (which is the fundamental law of the State and paramount to its legislature) must give way to a treaty and fall before it, can it be questioned whether the less power, an act of the State legislature, must be prostrated? * * * But it is asked: Did the fourth article intend to annul a law of the State, and to destroy rights acquired under it? I answer that the fourth article did intend to destroy all lawful impediment, past and future, and that the law of Virginia, and the payment under it, is a lawful impediment and would bar a recovery, if not destroyed by this article of the treaty."

In the case of *Chrirac v. Chrirac*, 2 Wheaton, 259, a native of France who had become a naturalized citizen of the United States died, leaving real property in the State of Maryland. A law of the State of Maryland provided that his foreign heirs might inherit, but could only hold property for ten years, unless they became citizens of the State of Maryland. A treaty of peace with France adopted in 1870, prior to the death of the decedent, enabled the people of one country, holding lands in the other, to dispose of the same by testament or otherwise, as they shall think proper; and to inherit lands in their respective countries without being obliged to obtain letters of naturalization. Chief Justice Marshall, in delivering the opinion of the court, said: "The plaintiffs having failed to convey the property in question, their estate has terminated unless it be supported in some other manner than by the act of Maryland. * * * It (the treaty)

does away with the incapacity of alienage and places the defendants in error in precisely the same situation with respect to lands, as if they had become citizens. It renders the performance of the condition a useless formality and seems to the court to release the rights of the State as entirely in this case as in the case of one who had purchased instead of taking by descent. The act of Maryland had no particular reference to the case of *Chrillac*, but is a general rule of State policy, prescribing the terms on which French subjects may take and hold land. This rule is changed by the treaty."

In the case of *Hauenstein v. Lynham*, 100 U. S. 483, a law of Maryland which only allowed alien heirs or devisees being in the State to take and hold real property, upon filing a declaration of intention to reside within this State, was before the court for construction. An alien resident of Virginia died, leaving alien heirs residing in Switzerland. Our treaty of 1850 with Switzerland provided that "If a citizen of one nation should inherit real property in the other, which by the law of the State or canton he could not hold on account of being an alien, he might nevertheless have such time to dispose of the same as the laws of the State or Canton will permit." There being no such law in Maryland, the property will escheat to the State, if the law was not deemed to be qualified by the provisions of the treaty. The court said: "If it had not such a law, it was competent to enact one and until one exists there can be no bar arising from the lapse of time. * * * That the laws of the State irrespective of the treaty would put funds into her coffers is no objection to the right or remedy claimed by the plaintiffs in error." The rule was reiterated in the case of *Geoffrey v. Riggs*, 133 U. S. 258, and in *In re Parrott*, 6 Sawyer, 349. In the former case the court admitted that there was some limitation upon the treaty-making power, but in respect to the holding and disposing of real property by aliens reiterated the rule that the treaty is supreme over State constitutions and laws. Although there may be no decision of the Supreme Court of the United States which is entirely satisfactory, the doctrine of the supremacy of treaties over State

laws and constitutions is laid down so broadly and emphatically that the provisions of treaties in relation to the taking, holding and disposing of real property by aliens, can not be disregarded in an investigation of this subject.

Numerous treaties have been made containing no reference to the rights of citizens or subjects of one nation relative to the ownership of real property in the other. But the treaties with the following nations regulate the capacity of their citizens or subjects to take and transfer real property in the United States:

ARGENTINE CONFEDERATION (1853).—Same rights as American citizens.

AUSTRIA-HUNGARY (1848).—Take by inheritance, but must dispose of the property within two years.

BOLIVIA (1858).—Take by inheritance, but must dispose of the property within the time prescribed by law.

BORNEO (1850).—Possess all the rights the United States grants to the most favored nation.

BRUNSWICK-LUNEBURG (1854).—Take by inheritance, but must dispose of the property within the time prescribed by law.

CONGO (1891).—Possess all the rights the United States grants to the most favored nation.

NEW GRANADA (1846).—Take by succession and may dispose of the property at pleasure.

DOMINICAN REPUBLIC (1867).—Take by inheritance, but must dispose of the property within the time prescribed by law.

ECUADOR (1839).—Take by inheritance, but must dispose of the property within three years.

FRANCE (1853).—The rights of Frenchmen are subject to the laws of the different States.

GRAND DUCHY OF HESSE (1844).—Take by inheritance, but must dispose of the property within two years, or within a reasonable time thereafter.

HAWAIIAN ISLANDS (1849).—Take by inheritance, and are allowed a reasonable time to dispose of the property.

ITALY (1871).—“As for the case of real estate, citizens and subjects of the two contracting parties shall be treated on the footing of the most favored nation.”

MECKLENBURG-SCHWERIN (1847).—Take by inheritance, and are allowed a reasonable time to dispose of the property.

NICARAGUA (1867).—Take by inheritance, but in a State where they are not permitted to hold property, they are allowed such time to sell the same as the law permits.

ORANGE FREE STATE (1871).—Take by inheritance, and are allowed such time to sell the property as the law, where the same is situated, permits.

PERU (1887).—Take by inheritance, and may dispose of the property at pleasure.

PORTUGAL (1840).—Take by inheritance, and may dispose of the property within the time prescribed by law, or within a reasonable time.

PRUSSIA (1828).—Take by inheritance, and are allowed a reasonable time to sell the property.

RUSSIA (1832).—Take by inheritance, and may dispose of the property within the time prescribed by law, or if no time is prescribed, then within a reasonable time.

SALVADOR (1870).— Possess full rights of ownership and disposition of real property.

SAXONY (1845).— Take by inheritance, but must dispose of the property within three years.

SERVIA (1881).— Possess all the rights the United States grants to the most favored nation.

SPAIN (1795).— Take by inheritance, and are allowed a reasonable time to sell the property.

SWISS CONFEDERATION (1850).— Take by inheritance, and allowed a term of not less than three years to sell the property.

TONGA (1886).— Possess all the rights the United States grants to the most favored nation.

WURTEMBERG (1844).— Take by inheritance, and are allowed two years to sell the property, which term may be extended.

Respectfully submitted,

CHARLES Z. LINCOLN.

WILLIAM H. JOHNSON.

A. JUDD NORTHRUP.

THE REAL PROPERTY LAW.

AN ACT relating to real property, constituting chapter forty-six of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XLVI OF THE GENERAL LAWS.

The Real Property Law.

- Article**
1. Tenure of real property. (§§ 1-9.)
 2. Creation and division of estates. (§§ 20-56.)
 3. Uses and trusts. (§§ 70-93.)
 4. Powers. (§§ 110-163.)
 5. Dower. (§§ 170-187.)
 6. Landlord and tenant. (§§ 190-202.)
 7. Conveyances and mortgages. (§§ 205-234.)
 8. Recording instruments affecting real property. (§§ 240-277.)
 9. Descent of real property. (§§ 280-296.)
 10. Laws repealed; when to take effect. (§§ 300-301.)

ARTICLE I.

Tenure of Real Property.

- Section**
1. Short title; definitions; effect.
 2. Capacity to hold real property.
 3. Capacity to transfer real property.
 4. Deposition of resident alien.
 5. When and how alien may acquire and transfer real property.

Section. 6. Effect of marriage with alien.

7. Title through alien.

8. Liabilities of alien holders of real property.

9. Heirs of patriotic Indian.

Section 1. Short title; definitions; effect. — This chapter shall be known as the real property law. The terms “real property” and “lands” as used in this chapter are coextensive in meaning with lands, tenements and hereditaments. This chapter does not alter or impair any vested estate, interest or right, nor alter or affect the construction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law.

[R. S., 2461, pt. II, ch. 1, tit. V, §§ 10, 11,
unchanged in substance.

See definition of real property in statutory construction law,
§ 3.]

§ 2. Capacity to hold real property.—A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

[R. S., 2419, pt. II, ch. 1, tit. I, § 8,
unchanged in substance.]

§ 3. Capacity to transfer real property.—A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

[R. S., 2419, pt. II, ch. 1, tit. I, § 10,
unchanged in substance.]

§ 4. Deposition of resident alien.—An alien who, pursuant to the laws of the United States, has declared his intention of becoming a citizen, and who is, and intends to remain, a resident thereof, may make a written deposition to such facts, before any

officer authorized to take the acknowledgment or proof of deeds to entitle them to be recorded within the state. Such deposition must be certified by the officer before whom it is made, and may be filed in the office of the secretary of state, and when so filed, must be recorded by him in a book kept for that purpose.

Such deposition shall be presumptive evidence of the facts therein contained.

[R. S., 2420, pt. II, ch. 1, tit. I, § 15, as am. by
L. 1834, ch. 272,
unchanged in substance.

Section 847 of the code of civil procedure allows an affirmation. See U. S. Revised Statutes, § 2165.]

§ 5. When and how alien may acquire and transfer real property.—An alien may, for a term of six years after filing the deposition described in the last preceding section, take, hold, convey and devise real property. If such deposition be filed, or such alien be admitted to citizenship, a grant, devise, contract or mortgage theretofore made to or by him is as valid and effectual as if made thereafter; provided, however, that a devise to an alien shall not be valid unless a deposition be filed by him, or he be admitted to citizenship, within one year after the death of the testator, or if the devisee is a minor, within one year after his majority. If a person who has filed such a deposition dies within six years thereafter, and before he is admitted to citizenship, his widow is entitled to dower in his real property, and if he dies intestate, his heirs or the persons who would otherwise answer to the description of heirs, inherit his real property, upon such persons being admitted to citizenship, or filing a deposition in their own behalf, within one year after such death, or if minors, within one year after their majority. If an action or proceeding is commenced by the state to recover real property held by an alien, such action or proceeding shall be suspended upon the filing of such deposition. and the service of a certified copy thereof upon the attorney-general, and the payment of the costs to the time of such service.

[R. S., 2420, pt. II, ch. 1, tit. I, §§ 16-19,
Id., 2422; L. 1802, ch. 49, §§ 1-2,
Id., 2422; L. 1804, ch. 109, § 31,
Id., 2423; L. 1808, ch. 175, § 2,
Id., 2424; L. 1819, ch. 25, § 2,
Id., 2424; L. 1830, ch. 171,
Id., 2425; L. 1845, ch. 115, §§ 1-8, 10,
L. 1893, ch. 207,

See revisers' note to this chapter for full discussions of the subject of aliens in relation to their rights respecting real property.]

§ 6. Effect of marriage with alien.—A woman who, being a citizen of the United States, marries an alien not entitled to hold real property in this state, may, notwithstanding such marriage, take by grant, will or descent, and hold, convey and devise real property within this state; and the descendants of such a woman who dies intestate, inherit her real property within this state, and any real property which she would have been entitled to take, by descent, if living; and such descendants may take real property by grant or devise from their mother, or from any citizen to whom she would be an heir, may hold real property acquired under this section, and may convey and devise it to any person capable of holding the same.

[R. S., 2428; L. 1872, ch. 120,
R. S. (supp.), 3351; L. 1889, ch. 42,
re-enacted with the following change:

The children of a woman who marries an alien are permitted to inherit any real property which the mother could have taken by descent, while the act of 1889, ch. 42, only permitted the children to take real property from the mother and from or through some ancestor of the mother.

The principle of section six, allowing a woman who has married an alien and resides abroad to take and hold real property within the state, has been followed in several states which do not allow nonresident aliens to hold property within their territory.

In Indiana, the revised statutes, section 3328, provide: "The marriage of a woman with an alien, and her residence in a foreign country, shall not bar her right to hold, convey, devise or pass by descent lands which may have come to her by descent or purchase."

In Missouri, section 343 of the revised statutes provides that "A woman born in the United States, married to an alien, and residing in a foreign country, may convey or devise real property within the state."

Article 19 of the Code Napoleon provides that "A French woman who marries an alien follows the nationality of her husband, unless her marriage does not confer his nationality upon her, and in that event she remains French."】

§ 7. Title through alien.—The right, title or interest in or to real property in this state of any person entitled to hold the same can not be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

【R. S., 2419, pt. II, ch. 1 tit. I, § 9,
Id., 2422; L. 1802, ch. 49, § 3,
Id., 2423; L. 1807, ch. 123, § 2,
Id., 2427; L. 1845, ch. 115, § 9,
Id., 2427; L. 1857, ch. 576, § 1,
Id., 2428; L. 1868, ch. 513, § 1,
Id., 2428; L. 1872, ch. 141, §§ 1-3,
Id., 2428; L. 1872, ch. 358, § 1,
Id., 2429; L. 1875, ch. 336, §§ 1-2,
Id., 2429; L. 1877, ch. 111, §§ 1, 2,
unchanged in substance.】

§ 8. Liabilities of alien holders of real property.— Every alien holding real property in this state is subject to duties, assessments, taxes and burdens as if he were a citizen of the state.

[R. S., pt. II, ch. 1, tit. I, § 20,
Id., 2447; L. 1845, ch. 115, § 12,
with the following change:

The words "but shall not be elected to any office or serve on any jury," are omitted as unnecessary.

The code of civil procedure, § 1027, prescribes the qualifications of trial jurors, and the revised statutes, pt. IV, ch. 2, § 3, p. 720, prescribes the qualifications of persons who may be placed on the grand jury lists. Public officers law, § 3, prescribes the qualifications for holding office.]

§ 9. Heirs of patriotic Indian.—The heirs of an Indian to whom real property was granted for military services rendered during the war of the revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of their ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor, indorsed thereupon.

[R. S., 2420, pt. II, ch. 1, tit. I, § 13,
unchanged in substance.]

ARTICLE II.

Creation and Division of Estates.

Section 20. Enumeration of estates.

21. Estate in fee simple and fee simple absolute.
22. Estates tail abolished; remainders thereon.
23. Freeholds; chattels real; chattel interests.
24. When estate for life of third person is freehold; when chattel real.
25. Estates in possession and expectancy.
26. Enumeration of estates in expectancy.
27. Definition of future estates.
28. Definition of remainder.
29. Definition of reversion.

Section. 30. When future estates are vested; when contingent.

31. Power of appointment not to prevent vesting.
32. Suspension of power of alienation.
33. Limitation of successive estates for life.
34. Remainders on estates for life of third person.
35. When remainder to take effect if estate be for lives of more than two persons.
36. Contingent remainder on term of years.
37. Estate for life as remainder on term of years.
38. Meaning of heirs and issue in certain remainders.
39. Limitations of chattels real.
40. Creation of future and contingent estates.
41. Future estates in the alternative.
42. Future estates valid though contingency improbable.
43. Conditional limitations.
44. When heirs of life tenants take as purchasers.
45. When remainder not limited on contingency defeating precedent estate takes effect.
46. Posthumous children.
47. When expectant estates are defeated.
48. Effect on valid remainders of determination of precedent estate before contingency.
49. Qualities of expectant estates.
50. Dispositions of rents and profits.
51. Accumulations.
52. Anticipation of directed accumulation.
53. Undisposed of profits.
54. When expectant estates are deemed created.
55. Estates in severalty, joint tenancy and in common.
56. When estate in common; when in joint tenancy.

Section 20. Enumeration of estates.—Estates in real property are divided into estates of inheritance, estates for life, estates for years, estates at will, and by sufferance.

**[R. S., 2430, pt. II, ch. 1, tit. II, § 1,
unchanged in substance.]**

§ 21. Estates in fee simple and fee simple absolute.—An estate of inheritance continues to be termed a fee simple, or fee, and, when not defeasible or conditional, a fee simple absolute, or an absolute fee.

[R. S., 2431, pt. II, ch. 1, tit. II, § 2,
unchanged in substance.]

§ 22. Estates tail abolished; remainders thereon.— Estates tail have been abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed before the twelfth day of July, seventeen hundred and eighty-two, shall be deemed a fee simple; and if no valid remainder be limited thereon, a fee simple absolute. Where a remainder in fee shall be limited on any estate which would be a fee tail, according to the law of this state, as it existed previous to such date, such remainder shall be valid, as a contingent limitation on a fee, and shall vest in possession on the death of the first taker, without issue living at the time of such death.

[R. S., 2431, pt. II, ch. 1, tit. II, §§ 3, 4,
unchanged in substance.]

§ 23. Freeholds; chattels real; chattel interests.— Estates of inheritance and for life, shall continue to be termed estates of freehold; estates for years are chattels real; and estates at will or by sufferance, continue to be chattel interests, but not liable as such to sale on execution.

[R. S., 2431, pt. II, ch. 1, tit. II, § 5,
unchanged in substance.]

§ 24. When estate for life of third person is freehold, when chattel real.—An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee; after his death it shall be deemed a chattel real.

[R. S., 2431, pt. II, ch. 1, tit. II, § 6,
unchanged in substance.]

§ 25. Estates in possession and expectancy.—Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

【R. S., 2431, pt. II, ch. 1, tit. II, §§ 7, 8,
unchanged in substance.】

§ 26. Enumeration of estates in expectancy.—All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into,

1. Future estates: and
2. Reversions.

【R. S., 2431, pt. II, ch. 1, tit. II, § 9,
Id., 2435, pt. II, ch. 1, tit. II, § 42,
unchanged in substance.】

§ 27. Definition of future estates.—A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

【R. S., 2431, pt. II, ch. 1, tit. II, § 10,
unchanged in substance.】

§ 28. Definition, remainder.—Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

【R. S., 2431, pt. II, ch. 1, tit. II, § 11,
unchanged in substance.】

§ 29. Definition, reversion.—A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

**[R. S., 2431, pt. II, ch. 1, tit. II, § 12,
unchanged in substance.]**

§ 30. When future estates are vested; when contingent.—A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an immediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

**[R. S., 2432, pt. II, ch. 1, tit. II, § 13,
unchanged in substance.]**

§ 31. Power of appointment not to prevent vesting. — The existence of an unexecuted power of appointment does not prevent the vesting of a future estate, limited in default of the execution of the power.

[New. It has seemed to the revisers that the doubts on this subject which have occasionally been referred to since 1830, should be settled by the Legislature. The proposed section is in harmony with the weight of authority and with the rest of the law on this subject. See 2 Smith's Fearne, 193; Root v. Stuyvesant, 18 Wend. 268; Hawley v. James, 5 Paige, 467.]

§ 32. Suspension of power of alienation. — The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons

may be determined before they attain full age. For the purposes of this section a minority is deemed a part of a life and not an absolute term equal to the possible duration of such minority.

[R. S., 2432, pt. II, ch. 1, tit. II, §§ 14, 15, 16,
unchanged in substance, except that the last sentence,
which is declaratory of existing law is new. See *Lang v. Ropke*, 3 Sandford, 369.]

§ 33. Limitation of successive estates for life. — Successive estates for life shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

[R. S., 2432, pt. II, ch. 1, tit. II, § 17,
unchanged in substance.]

§ 34. Remainders on estates for life of third person. — A remainder shall not be created on an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created on such an estate in a term of years, unless it be for the whole residue of such term.

[R. S., 2432, pt. II, ch. 1, tit. II, § 18,
unchanged in substance.]

§ 35. When remainders to take effect if estate be for lives of more than two persons. — When a remainder is created on any such life estate, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder shall take effect on the death of the two persons first named, as if no other lives had been introduced.

[R. S., 2433, pt. II, ch. 1, tit. II, § 19,
unchanged in substance.]

§ 36. Contingent remainder on term of years. — A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or on the termination thereof.

【R. S., 2433, pt. II, ch. 1, tit. II, § 20,
unchanged in substance.】

§ 37. Estate for life as remainder on term of years. — No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

【R. S., 2433, pt. II, ch. 1, tit. II, § 21,
unchanged in substance.】

§ 38. Meaning of heirs and issue in certain remainders. — Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue," shall be construed to mean heirs or issue, living at the death of the person named as ancestor.

【R. S., pt. II, ch. 1, tit. II, § 22,
unchanged in substance.】

§ 39. Limitations of chattels real. — All the provisions contained in this article, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

【R. S., 2433, pt. II, ch. I, tit. II, § 23,
unchanged in substance.】

§ 40. Creation of future and contingent estates. — Subject to the provisions of this article, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited

thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee or other less estate, may be limited on a fee, on a contingency which, if it should occur, must happen within the period prescribed in this article.

[R. S., 2433, pt. II, ch. 1, tit. II, § 24,

The words "or other less estate" are added. See 2 Blk. Com., 173.]

§ 41. Future estates in the alternative. — Two or more future estates may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

[R. S., 2433, pt. II, ch. 1, tit. II, § 25,
unchanged in substance.]

§ 42. Future estate valid though contingency improbable. — A future estate, otherwise valid, shall not be void on the ground of the improbability of the contingency on which it is limited to take effect.

[R. S. 2433, pt. II, ch. 1, tit. II, § 26,
unchanged in substance.]

§ 43. Conditional limitations. — A remainder may be limited on a contingency, which, if it happens, will operate to abridge or determine the precedent estate; and every such remainder shall be a conditional limitation.

[R. S. 2433, pt. II, ch. 1, tit. II, § 27,
unchanged in substance.]

§ 44. When heirs of life tenant take as purchasers. — Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them.

**[R. S. 2433, pt. II, ch. 1, tit. II, § 28,
unchanged in substance.]**

§ 45. When remainder not limited on contingency defeating precedent estate, takes effect.— When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration by lapse of time of such term of years.

**[R. S. 2433, pt. II, ch. 1, tit. II, § 29,
unchanged in substance.]**

§ 46. Posthumous children.— Where a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parents; and a future estate, dependent on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

**[R. S. 2434, pt. II, ch. 1, tit. II, §§ 30, 31,
unchanged in substance.]**

§ 47. When expectant estates are defeated.— An expectant estate can not be defeated or barred by any transfer or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise; but an expectant estate may be defeated in any manner, or by any act or means which the party creating such estate, in the creation thereof, has provided for or authorized. An expectant estate thus liable to be defeated shall not, on that ground, be adjudged void in its creation.

**[R. S. 2434, pt. II, ch. 1, tit. II, §§ 32, 33,
unchanged in substance.]**

§ 48. Effect on valid remainders of determination of precedent estate before contingency.— A remainder valid in its creation

shall not be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder was limited to take effect; should such contingency afterwards happen the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

【R. S. 2434, pt. II, ch. 1, tit. II, § 34,
unchanged in substance.】

§ 49. Qualities of expectant estates.— An expectant estate is descendible, devisable and alienable, in the same manner as an estate in possession.

【R. S. 2434, pt. II, ch. 1, tit. II, § 35,
unchanged in substance.】

§ 50. Dispositions of rents and profits.— A disposition of the rents and profits of real property to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article, for future estates in real property.

【R. S. 2434, pt. II, ch. 1, tit. II, § 36,
unchanged in substance.】

§ 51. Accumulations.— All directions for the accumulation of the rents and profits of real property, except such as are allowed by statute, shall be void. An accumulation of rents and profits of real property, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real property as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at or before the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it must commence within the time per-

mitted, by the provisions of this article, for the vesting of future estates, and during the minority of the beneficiaries, and shall terminate at or before the expiration of such minority.

3. If in either case such direction be for a longer term than during the minority of the beneficiaries it shall be void only as to the time beyond such minority.

[R. S. 2434-5, pt. II, ch. 1, tit. II, §§ 37, 38,
unchanged in substance.]

§ 52. Anticipation of directed accumulation.—Where such rents and profits are directed to be accumulated for the benefit of a minor entitled to the expectant estate, and such minor is destitute of other sufficient means of support and education, the supreme court, at a special term, or, if such accumulation has been directed by will, the surrogate's court of the county in which such will has been admitted to probate, may, on the application of his general or testamentary guardian, direct a suitable sum out of such rents and profits to be applied to his maintenance or education.

[R. S., 2435, pt. II, ch. 1, tit. II, § 39, as am. by
L. 1891, ch. 172,

The words "general or testamentary" before the word "guardian" are new.]

§ 53. Undisposed profits.—When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

[R. S., 2435, pt. II, ch. 1, tit. II, § 40,
unchanged in substance.]

§ 54. When expectant estates are deemed created.—Where an expectant estate is created by grant, the delivery of the grant, and,

where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

**[R. S., 2435, pt. II, ch. 1, tit. II, § 41,
unchanged in substance.]**

§ 55. Estates in severalty, joint tenancy and in common.—Estates in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

**[R. S., 2435, pt. II, ch. 1, tit. II, § 43,
unchanged in substance.]**

§ 56. When estate in common; when in joint tenancy.—Every estate granted or devised to two or more persons in their own right, shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter granted or devised.

**[R. S., 2435, pt. II, ch. 1, tit. II, § 44,
unchanged in substance.]**

ARTICLE III.

Uses and Trusts.

Section 70. Executed uses existing.

71. Certain uses and trusts abolished.
72. When right to possession creates legal ownership.
73. Trustees of passive trust not to take.
74. Grant to one where consideration paid by another.
75. Bona fide purchasers protected.
76. Purposes for which express trusts may be created.
77. Certain devises to be deemed powers.
78. Surplus income of trust property liable to creditors.
79. When an authorized trust is valid as a power.

Section. 80. Trustee to express trust to have whole estate.

81. Qualification of last section.

82. Interest remaining in grantor of express trust.

83. What trust interest may be aliened.

84. Transferee of trust property protected.

85. When trustee may convey trust property.

86. When trustee may lease trust property.

87. Notice to beneficiary where trust property is conveyed, mortgaged or leased.

88. Person paying money to trustee protected.

89. When estate of trustee ceases.

90. Termination of trusts for the benefit of creditors.

91. Trust estate not to descend.

92. Resignation or removal of trustee and appointment of successor.

93. Grants and devises of real property for charitable purposes.

Section 70. Executed uses existing.—Every estate which is now held as a use, executed under any former statute of the state, is confirmed as a legal estate.

**[R. S., 2436, pt. II, ch. 1, tit. II, § 46,
unchanged in substance.]**

§ 71. Certain uses and trusts abolished.—Uses and trusts concerning real property, except as authorized and modified by this article, have been abolished; every estate or interest in real property is deemed a legal right, cognizable as such in the courts, except as otherwise prescribed in this chapter.

**[R. S., 2436, pt. II, ch. 1, tit. II, § 45,
unchanged in substance.]**

§ 72. When right to possession creates legal ownership.—Every person, who, by virtue of any grant, assignment or devise, is entitled both to the actual possession of real property, and to the receipt of the rents and profits thereof, in law or equity, shall

be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest; but this section does not divest the estate of the trustee in any trust existing on the first day of January, eighteen hundred and thirty, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

【R. S., 2436, pt. II, ch. 1, tit. II, §§ 47, 48,
unchanged in substance.】

§ 73. Trustee of passive trust not to take— Every disposition of real property, whether by deed or by devise, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to another to the use of, or in trust for, such person; and if made to any person to the use of, or in trust for another, no estate or interest, legal or equitable, vests in the trustee. But neither this section nor the preceding sections of this article shall extend to trusts arising, or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this chapter.

【R. S., 2437, pt. II, ch. 1, tit. II, §§ 49, 50,
unchanged in substance.】

§ 74. Grant to one where consideration paid by another.— A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment, to the person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or,

2. In violation of some trust, purchases the property so conveyed with money or property belonging to another.

[R. S. 2437, pt. II, ch. 1, tit. II, §§ 51, 52, 53,
unchanged in substance.]

§ 75. Bona fide purchasers protected.— An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust.

[R. S. 2437, pt. II, ch. 1, tit. II, § 54,
unchanged in substance.]

§ 76. Purposes for which express trusts may be created.— An express trust may be created for one or more of the following purposes:

1. To sell real property for the benefit of creditors;
2. To sell, mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;
3. To receive the rents and profits of real property, and apply them to the use of any person, during the life of that person, or for any shorter term, subject to the provisions of law relating thereto;
4. To receive the rents and profits of real property, and to accumulate the same for the purposes, and within the limits, prescribed by law.

[R. S. 2437, pt. II, ch. 1, tit. II, § 55,
unchanged in substance.]

§ 77. Certain devises to be deemed powers.— A devise of real property to an executor or other trustee, for the purpose of sale or mortgage, where the trustee is not also empowered to receive the rents and profits, shall not vest any estate in him; but the trust shall be valid as a power, and the real property shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

**[R. S. 2438, pt. II, ch. 1, tit. II, § 56,
unchanged in substance.]**

§ 78. Surplus income of trust property liable to creditors.— Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which can not be reached by execution.

**[R. S. 2438, pt. II, ch. 1, tit. II, § 57,
unchanged in substance.]**

§ 79. When an authorized trust is valid as a power.— Where an express trust relating to real property is created for any purpose not specified in the preceding sections of this article, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions of this chapter.

Where a trust is valid as a power, the real property to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

**[R. S. 2438, pt. II, ch. 1, tit. II, §§ 58, 59,
unchanged in substance.]**

§ 80. Trustee of express trust to have whole estate.— Except as otherwise prescribed in this chapter, an express trust, valid as such in its creation, shall vest in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary shall not take any legal estate or interest in the property, but may enforce the performance of the trust.

**[R. S. 2438, pt. II, ch. 1, tit. II, § 60,
unchanged in substance.]**

§ 81. Qualification of last section.— The last section shall not prevent any person, creating a trust, from declaring to whom the

real property, to which the trust relates, shall belong, in the event of the failure or termination of the trust, or from granting or devising the property, subject to the execution of the trust. Such a grantee or devisee shall have a legal estate in the property, as against all persons, except the trustees, and those lawfully claiming under him.

**[R. S. 2438, pt. II, ch. 1, tit. II, § 61,
unchanged in substance.]**

§ 82. Interest remaining in grantor of express trust.—Where an express trust is created, every legal estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to, the person creating the trust or his heirs.

**[R. S. 2439, pt. II, ch. 1, tit. II, § 62,
unchanged in substance.]**

§ 83. What trust interest may be alienated.—The right of a beneficiary of an express trust to receive rents and profits of real property and apply them to the use of any person, can not be transferred by assignment or otherwise; but the right and interest of the beneficiary of any other trust may be transferred. Whenever a beneficiary in a trust for the receipt of the rents and profits of real property is entitled to a remainder in the whole or a part of the principal fund so held in trust subject to his beneficial estate for a life or lives, or a shorter term, he may release his interest in such rents and profits, and thereupon the estate of the trustee shall cease in that part of such principal fund to which such beneficiary has become entitled in remainder, and such trust estate merges in such remainder.

**[R. S., 2439, pt. II, ch. 1, tit. II, § 63, as am. by
L. 1893, ch. 452,
unchanged in substance as to real property without repeal.]**

§ 84. Transferee of trust property protected.—Where an express trust is created, but is not contained or declared in the conveyance to the trustee, the conveyance shall be deemed absolute as

to the subsequent creditors of the trustee not having notice of the trust, and as to subsequent purchasers from the trustee, without notice and for a valuable consideration.

[R. S., 2439, pt. II, ch. 1, tit. II, § 64,
unchanged in substance.]

§ 85. When trustee may convey trust property.— If the trust is expressed in the instrument creating the estate, every sale, conveyance or other act of the trustee, in contravention of the trust, except as provided in this section, shall be absolutely void. The supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such trustee to mortgage or sell such real property, or any part thereof, whenever it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary and for the benefit of the estate, to raise funds for the purpose of preserving and improving it; and whenever the interest of the trust estate in any real property is an undivided part or share thereof, the same may be sold, if it shall appear to the court to be for the best interest of such estate.

[R. S., 2439, pt. II, ch. 1, tit. II, § 65, as am. by
L. 1895, ch. 886,
re-enacted in part; unchanged in substance, except that
the proceeding is required to be held in court, instead of in
court before a judge thereof, as at present.]

§ 86. When trustee may lease trust property.— A trustee appointed to hold real property during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to or for the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The supreme court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interest of the trust

estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewed term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term.

If any such trustee has leased any such trust property before June fourth, eighteen hundred and ninety-five, for a longer term than five years, the supreme court, on the application of such trustee, may, by order, confirm such lease, and such order, on the entry thereof, shall be binding on all persons interested in the trust estate.

[R. S., 2349, pt. II, ch. 1, tit. II, § 65, as am. by

L. 1895, ch. 886,

re-enacted in part; unchanged in substance, except that the proceeding is required to be had in court instead of in court or before a judge thereof.]

§ 87. Notice to beneficiary where trust property is conveyed, mortgaged or leased.—The supreme court shall not grant an order under either of the last two preceding sections, unless it appears to the satisfaction of such court that a written notice, stating the time and place of the application therefor, has been served upon the beneficiary of such trust property at least eight days before the making thereof, if such beneficiary is an adult within the state or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such person of such notice as the court, or a justice thereof, prescribes.

[R. S., 2439, pt. II, ch. 1, tit. II, § 65, as am. by

L. 1895, ch. 886,

unchanged in substance.]

§ 88. Person paying money to trustee protected.—A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him

from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

【R. S., 2440, pt. II, ch. 1, tit. II, § 66,
unchanged in substance.】

§ 89. When estate of trustee ceases.—When the purpose for which an express trust is created ceases the estate of the trustee shall also cease.

【R. S., 2440, pt. II, ch. I, tit. II, § 67,
unchanged in substance.】

§ 90. Termination of trusts for the benefit of creditors.—Where an estate or interest in real property has heretofore vested or shall hereafter vest in the assignee or other trustee for the benefit of creditors, it shall cease at the expiration of twenty-five years from the time when the trust was created, except where a different limitation is contained in the instrument creating the trust, or is especially prescribed by law. The estate or interest remaining in the trustee or trustees shall thereon revert to the assignor, his heirs, devisee or assignee, as if the trust had not been created.

【R. S., 2440, pt. II, ch. 1, tit. II, § 67,
L. 1875, ch. 545,
unchanged in substance.】

§ 91. Trust estate not to descend.—On the death of the last surviving or sole trustee of an express trust, the trust estate shall not descend to his heirs nor pass to his next of kin or personal representatives; but in the absence of a contrary direction on the part of the person creating the same, such trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose under the direction of the court, who shall not be appointed until the beneficiary thereof shall have been brought into court by such notice in such manner as the court or a justice thereof may direct.

**[R. S., 2440, pt. II, ch. 1, tit. II, § 68,
Id., 2444; L. 1882, ch. 185,
unchanged in substance.]**

§ 92. Resignation or removal of trustee and appointment of successor.—The supreme court has power, subject to the regulations established for the purpose in the general rules of practice:

1. On his application by petition or action, to accept the resignation of a trustee, and to discharge him from the trust on such terms as are just.

2. In an action brought, or on a petition presented, by any person interested in the trust, to remove a trustee who has violated or threatens to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause shall be deemed to be an unsuitable person to execute the trust.

3. In case of the resignation or removal of a trustee, to appoint a new trustee in his place, and in the meantime, if there is no acting trustee, to cause the trust to be executed by a receiver or other officer under its direction.

This section shall not apply to a trust arising or resulting by implication of law, nor where other provision is specially made by law, for the resignation or removal of a trustee or the appointment of a new trustee.

**[R. S., 2440, pt. II, ch. 1, tit. II, § 69,
Sections 70, 71, 72 unchanged in substance. The language of § 72 R. S. proved somewhat ambiguous in practice. See Van Buskerck v. Herrick, 35 Barb. 259. It is believed that it was not directed to the exclusion of those trusts which were valid only as powers, but merely of those referred to in R. S., 2436, pt. II, ch. 1, tit. II, § 50, re-enacted in § 73 of revision.]**

§ 93. Grants and devises of real property for charitable purposes.—A conveyance or devise of real property for religious,

educational, charitable or benevolent uses, which is in other respects valid, is not to be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument making such conveyance or devise. If in such instrument, a trustee is named to execute the same, the legal title to the real property granted or devised shall vest in such trustee. If no person is named as trustee, the title to such real property vests in the supreme court, and such court shall have control thereof. The attorney-general shall represent the beneficiaries in such cases and enforce such trusts by proper proceedings.

**[L. 1893, ch. 701,
unchanged as to real property.]**

ARTICLE IV.

Powers.

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112. Definitions of grantor, grantee.

113. Division of powers.

114. General power.

115. Special power.

116. Beneficial power.

117. General power in trust.

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119. Capacity to grant a power.

120. How power may be granted.

121. Capacity to take and execute a power.

122. Capacity of married woman to take power.

123. Capacity to take a special and beneficial power.

124. Reservation of a power.

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Section 110. Effect of article.— Powers, as they existed by law on the thirty-first day of December, eighteen hundred and twenty-nine, have been abolished. Hereafter the creation, construction and execution of powers, affecting real property, shall be subject to the provisions of this article; but this article does not extend to a simple power of attorney, to convey real property in the name, and for the benefit of the owner.

**[R. S. 2445, pt. II, ch. 1, tit. II, §§ 73, 134,
unchanged in substance.]**

§ 111. Definition of a power.— A power is an authority to do an act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner, granting or reserving the power, might himself lawfully perform.

**[R. S. 2445, pt. II, ch. 1, tit. II, § 74,
unchanged in substance.]**

§ 112. Definitions of grantor, grantee.— The word “grantor” is used in this article, in connection with a power, as designating the person by whom the power is created, whether by grant or by devise; and the word “grantee” is so used as designating the person in whom the power is vested, whether by grant, devise or reservation.

**[R. S. 2451, pt. II, ch. 1, tit. II, § 135,
unchanged in substance.]**

§ 113. Division of powers.— A power, as authorized in this article, is either general or special, and either beneficial or in trust.

**[R. S. 2446, pt. II, ch. 1, tit. II, § 76,
unchanged in substance.]**

§ 114. General power.— A power is general, where it authorizes the transfer or encumbrance of a fee, by either a conveyance or a will of or a charge on the property embraced in the power, to any grantee whatever.

**[R. S. 2446, pt. II, ch. 1, tit. II, § 77,
unchanged in substance. See Tallmage v. Sill, 21 Barb. 52.]**

§ 115. Special power.—A power is special where either:

1. The persons or class of persons to whom the disposition of the property under the power is to be made are designated; or,
2. The power authorizes the transfer or encumbrance, by a conveyance, will or charge, of any estate less than a fee.

**[R. S., 2446, pt. II, ch. 1, tit. II, § 78,
unchanged in substance.]**

§ 116. Beneficial power.—A general or special power is beneficial, where no person, other than the grantee, has, by the term of its creation, any interest in its execution. A beneficial power, general or special, other than one of those specified and defined in this article, is void.

**[R. S., 2446, pt. II, ch. 1, tit. II, §§ 79, 92,
unchanged in substance.]**

§ 117. General power in trust.—A general power is in trust, where any person or class of persons, other than the grantee of the power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from its execution.

**[R. S., 2447, pt. II, ch. 1, tit. II, § 94,
unchanged in substance. See Coster v. Lorillard, 14 Wend.
265; Germond v. Jones, 2 Hill, 574.]**

§ 118. Special power in trust.—A special power is in trust, where either,

1. The disposition or charge which it authorizes is limited to be made to a person or class of persons, other than the grantee of the power; or,
2. A person or class of persons, other than the grantee, is designated as entitled to any benefit, from the disposition or charge authorized by the power.

**[R. S., 2447, pt. II, ch. 1, tit. II, § 95,
unchanged in substance.]**

§ 119. Capacity to grant a power.—A person is not capable of granting a power, who is not, at the same time, capable of transferring an interest in the property to which the power relates.

[R. S., pt. II, ch. 1, tit. II, § 75,
unchanged in substance.]

§ 120. How power may be granted.—A power may be granted either:

1. By a suitable clause, contained in an instrument sufficient to pass an estate in the real property, to which the power relates; or,

2. By a devise contained in a will.

[R. S., 2448, pt. II, ch. 1, tit. II, § 106,
unchanged in substance.]

§ 121. Capacity to take and execute a power.—A power may be vested in any person capable in law of holding, but can not be exercised by a person not capable of transferring real property.

[R. S., 2449, pt. II, ch. 1, tit. II, § 109,
unchanged in substance, omitting the exception relating to married women, which is obsolete.]

§ 122. Capacity of married woman to take power.—A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without concurrence of her husband, of real property conveyed or devised to her in fee.

[R. S., 2446, pt. II, ch. 1, tit. II, § 80,
unchanged in substance.]

§ 123. Capacity to take a special and beneficial power.—A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To a tenant for life, of the real property embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life; and such a power is valid to authorize a lease for that period but is void as to the excess.

[R. S., 2447, pt. II, ch. 1, tit. II, § 87,
unchanged in substance, except that the last clause of subdivision two is new, and has been inserted to settle a question which has been involved in some obscurity. See *Root v. Stuyvesant*, 18 Wend. 257.]

§ 124. Reservation of a power.—The grantor in a conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and a power thus reserved, shall be subject to the provisions of this article, in the same manner as if granted to another.

[R. S., 2448, pt. II, ch. 1, tit. II, § 105,
unchanged in substance.]

§ 125. Effect of power to revoke.—Where the grantor in a conveyance reserves to himself for his own benefit, an absolute power of revocation, he is to be still deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

[R. S., 2447, pt. II, ch. 1, tit. II, § 86,
unchanged in substance.]

§ 126. Power to sell in a mortgage.—Where a power to sell real property is given to a mortgagee, or to the grantee in any other conveyance intended to secure the payment of money, the power is deemed a part of the security, and vests in, and may be executed by any person who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

[R. S., 2451, pt. II, ch. 1, tit. II, § 133,
unchanged in substance.]

§ 127. When power is a lien.—A power is a lien or charge on the real property which it embraces, as against creditors, pur-

chasers and encumbrancers in good faith and without notice, of or from a person having an estate in the property, only from the time the instrument containing the power is duly recorded. As against all other persons, the power is a lien from the time the instrument in which it is contained takes effect.

**[R. S., 2449, pt. II, ch. 1, tit. II, § 107,
unchanged in substance.]**

§ 128. When power is irrevocable.—A power, whether beneficial or in trust, is irrevocable, unless an authority to revoke it is granted or reserved in the instrument creating the power.

**[R. S., 2449, pt. II, ch. 1, tit. II, § 108,
unchanged in substance.]**

§ 129. When estate for life or years is changed into a fee.—Where an absolute power of disposition, not accompanied by a trust, is given to the owner of a particular estate for life or for years, such estate is changed into a fee absolute in respect to the rights of creditors, purchasers and encumbrancers, but subject to any future estates limited thereon, in case the power of absolute disposition is not executed, and the property is not sold for the satisfaction of debts.

**[R. S., 2446, pt. II, ch. 1, tit. II, § 81,
unchanged in substance.]**

§ 130. Certain powers create a fee.—Where a like power of disposition is given to a person to whom no particular estate is limited, such person also takes a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors, purchasers and encumbrancers.

§ 131. When grantee of power has absolute fee.—Where such a power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee.

[R. S., 2446, pt. II, ch. 1, tit. II, § 83,
unchanged in substance.]

§ 132. Effect of power to devise in certain cases.—Where a general and beneficial power to devise the inheritance is given to a tenant for life, or for years, such tenant is deemed to possess an absolute power of disposition within the meaning of and subject to the provisions of the last three sections.

[R. S., 2446, pt. II, ch. 1, tit. II, § 84,
unchanged in substance.]

§ 133. When power of disposition absolute.—Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute.

[R. S., 2447, pt. II, ch. 1, tit. II, § 85,
unchanged in substance. See *Jackson v. Edwards*, 7 Paige, 386; 22 Wend. 509.]

§ 134. Power subject to condition.—A general and beneficial power may be created subject to a condition precedent or subsequent, and until the power becomes absolutely vested it is not subject to any provision of the last four sections.

[New. It seems wise to place this provision in statutory form although it is probably the law. See *Taggart v. Murray*, 53 N. Y. 238; *Wright v. Tallmadge*, 15 id. 309.]

§ 135. Power of life tenant to make leases.—The power of a tenant for life to make leases is not assignable as a separate interest, but is annexed to his estate, and passes by a grant of such estate unless specially excepted. If so excepted, it is extinguished.

Such a power may be released by the tenant to a person entitled to an expectant estate in the property, and shall thereupon be extinguished.

[R. S., 2447, pt. II, ch. 1, tit. II, §§ 88, 89,
unchanged in substance.]

§ 136. Effect of mortgage by grantee.—A mortgage executed by a tenant for life, having a power to make leases, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein, and the effects on the power of such lien by mortgage are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his debt requires; and,

2. That any subsequent estate, created by the owner, in execution of the power, becomes subject to the mortgage as if in terms embraced therein.

[R. S., 2447, pt. II, ch. 1, tit. II, §§ 90, 91,
unchanged in substance.]

§ 137. When a trust power is imperative.—A trust power, unless its execution or nonexecution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled for the benefit of the person interested. A trust power does not cease to be imperative where the grantee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

[R. S., 2448, pt. II, ch. 1, tit. II, §§ 96, 97,
unchanged in substance.]

§ 138. Distribution when more than one beneficiary. — Where a disposition under a power is directed to be made to, among, or between, two or more persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion; but, when the terms of the power import that the estate or fund is to be distributed among the persons so designated, in such manner or proportions as the grantee of the power thinks proper, the grantee may allot the whole to any one or more of such persons in exclusion of the others.

[R. S. 2448, pt. II, ch. 1, tit. II, §§ 98, 99,
unchanged in substance.]

§ 139. Beneficial power subject to creditors.—A special and beneficial power is liable to the claims of creditors in the same manner as other interests that can not be reached by execution; and the execution of the power may be adjudged for the benefit of the creditors entitled.

[R. S. 2447, pt. II, ch. 1, tit. II, § 93,
unchanged in substance.]

§ 140. Execution of power on death of trustee.—If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as beneficiaries of the trust.

[R. S. 2448, pt. II, ch. 1, tit. II, § 100,
unchanged in substance.]

§ 141. When power devolves on court.—Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution devolves on the supreme court.

[R. S. 2448, pt. II, ch. 1, tit. II, § 101,
unchanged in substance.]

§ 142. When creditors may compel execution of trust power.—The execution, wholly or partly, of a trust power may be adjudged for the benefit of the creditors or assignees of a person entitled as a beneficiary of the trust, to compel its execution, where his interest is assignable.

[R. S. 2448, pt. II, ch. 1, tit. II, § 103,
unchanged in substance.]

§ 143. Defective execution of trust power.—Where the execution of a power in trust is defective, wholly or partly, under the provisions of this article, its proper execution may be adjudged in favor of the person designated as the beneficiary of the trust.

[R. S. 2451, pt. II, ch. 1, tit. II, § 131,
unchanged in substance.]

§ 144. Effect of insolvent assignment.— A beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass, respectively, to a trustee or committee of the estate of the person in whom the power or interest is vested, or an assignee for the benefit of creditors.

[R. S. 2448, pt. II, ch. 1, tit. II, § 104,
unchanged in substance.]

§ 145. How power must be executed.— A power can be executed only by a written instrument, which would be sufficient to pass the estate, or interest, intended to pass under the power, if the person executing the power were the actual owner.

[R. S. 2449, pt. II, ch. 1, tit. II, § 113,
unchanged in substance.]

§ 146. Execution by survivors.— Where a power is vested in two or more persons, all must unite in its execution; but if before its execution, one or more of such persons dies, the power may be executed by the survivor or survivors.

[R. S. 2449, pt. II, ch. 1, tit. II, § 112,
unchanged in substance.]

§ 147. Execution of power to dispose by devise.— Where a power to dispose of real property is confined to a disposition by devise or will, the instrument must be a written will, executed as required by law.

[R. S. 2449, pt. II, ch. 1, tit. II, § 115,
unchanged in substance.]

§ 148. Execution of power to dispose by grant.— Where a power is confined to a disposition by grant, it can not be executed by will, although the disposition is not intended to take effect until after the death of the person executing the power.

[R. S. 2449, pt. II, ch. 1, tit. II, § 116,
unchanged in substance.]

§ 149. When direction by grantor does not render power void.— Where the grantor of a power has directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the provisions of this article.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 118,
unchanged in substance.]**

§ 150. When directions by grantor need not be followed.— Where the grantor of a power has directed any formality to be observed in its execution, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formality is not necessary to the valid execution of the power.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 119,
unchanged in substance.]**

§ 151. Nominal conditions may be disregarded.— Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 120,
unchanged in substance.]**

§ 152. Intent of grantor to be observed.— Except as provided in this article, the intentions of the grantor of a power as to the manner, time and conditions of its execution must be observed; subject to the power of the supreme court, to supply a defective execution as provided in this article.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 121,
unchanged in substance.]**

§ 153. Consent of grantor or third person to execution of power.— Where the consent of the grantor or a third person to the execution of a power is requisite, such consent shall be ex-

pressed in the instrument by which the power is executed, or in a written certificate thereon. In the first case, the instrument of execution, in the second, the certificate, must be subscribed by the person whose consent is necessary; and to entitle the instrument to be recorded, such signature must be acknowledged or proved and certified in like manner as a deed to be recorded.

[R. S. 2450, pt. II, ch. 1, tit. II, § 122,
unchanged in substance. See *Kissam v. Durkes*, 49 N. Y. 602, in which Judge Rapallo says: "Whether one of the grantors of the power would come under the designation of a third party as used in this section, is not very material to the present case, though we think that the correct construction of the section would require an affirmative answer to that question if it arose."]

§ 154. When all must consent.—Where the consent of two or more persons to the execution of a power is requisite, all must consent thereto; but if, before its execution, one or more of them die, the consent of the survivor or survivors is sufficient, unless otherwise prescribed by the terms of the power.

[New. The last clause of this section is not now the law; see *Barber v. Cary*, 11 N. Y. 397; but it seems to be just and corresponds to the provisions of § 146.]

§ 155. Omission to recite power.—An instrument executed by the grantee of a power, conveying an estate or creating a charge, which he would have no right to convey or create, except by virtue of the power, shall be deemed a valid execution of the power, although the power be not recited or referred to therein.

[R. S. 2450, pt. II, ch. 1, tit. II, § 124,
unchanged in substance.]

§ 156. When devise operates as an execution of the power.—Real property embraced in a power to devise passes by a will purporting to convey all the real property of the testator, unless the intent that the will is not to operate as an execution of the power, appears, either expressly or by necessary implication.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 126,
unchanged in substance.]**

§ 157. Disposition not void because too extensive.—A disposition or charge by virtue of a power is not void on the ground that it is more extensive than was authorized by the power; but an estate or interest so created, so far as embraced by the terms of the power, is valid.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 123,
unchanged in substance.]**

§ 158. Computation of term of suspension.—The period during which the absolute right of alienation may be suspended, by an instrument in execution of a power must be computed, not from the date of such instrument, but from the time of the creation of the power.

**[R. S. 2450, pt. II, ch. 1, tit. II, § 128,
unchanged in substance.]**

§ 159. Capacity to take under a power.—An estate or interest can not be given or limited to any person, by an instrument in execution of a power, unless it would have been valid, if given or limited at the time of the creation of the power.

**[R. S. 2451, pt. II, ch. 1, tit. II, § 129,
unchanged in substance, but with some change of language
to remove the difficulty of construction suggested in Dempsey v. Tylee, 3 Duer, 73, 98, 101, 102. Compare Hoey v. Kenny, 25 Barb. 396.]**

§ 160. Purchase under defective execution.—A purchaser for a valuable consideration, claiming under a defective execution of a power, is entitled to the same relief as a similar purchaser, claiming under a defective conveyance from an actual owner.

**[R. S. 2451, pt. II, ch. 1, tit. II, § 132,
unchanged in substance.]**

§ 161. Instrument affected by fraud.— An instrument in execution of a power is affected by fraud, in the same manner as a conveyance or will, executed by an owner or by a trustee.

[R. S. 2450, pt. II, ch. 1, tit. II, § 125,
unchanged in substance.]

§ 162. Sections applicable to trust powers.— Sections ninety-one to ninety-three of this chapter, both inclusive, in relation to express trust estates, and the trustee thereof, apply equally to trust powers, however created, and to the grantees of such powers.

[R. S. 2448, pt. II, ch. 1, tit. II, § 102,
unchanged in substance.]

ARTICLE V.

Dower.

Section 170. Dower.

171. Dower in lands exchanged.

172. Dower in land mortgaged before marriage.

173. Dower in lands mortgaged for purchase money.

174. Surplus proceeds of sale under purchase money mortgages.

175. Widow of mortgagee not endowed.

176. When dower barred by misconduct.

177. When dower barred by jointure.

178. When dower barred by pecuniary provisions.

179. When widow to elect between jointure and dower.

180. Election between devise and dower.

181. When deemed to have elected.

182. When provision in lieu of dower is forfeited.

183. Effect of acts of husband.

184. Widow's quarantine.

185. Widow may bequeath crop.

186. Divorced woman may release dower.

187. Married woman may release dower by attorney.

Section 170. Dower.—A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

**[R. S. 2454, pt. II, ch. 1, tit. III, § 1,
unchanged in substance.]**

§ 171. Dower in lands exchanged.—If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

**[R. S. 2454-55, pt. II, ch. 1, tit. III, § 3,
unchanged in substance.]**

§ 172. Dower in lands mortgaged before marriage.—Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

**[R. S., 2455, pt. II, ch. 1, tit. III, § 4,
unchanged in substance.]**

§ 173. Dower in lands mortgaged for purchase-money.—Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

**[R. S., 2455, pt. II, ch. 1, tit. III, § 5,
unchanged in substance.]**

§ 174. Surplus proceeds of sale, under purchase-money mortgages. — Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

[R. S., 2454, pt. II, ch. 1, tit. III, § 6,
unchanged in substance.]

§ 175. Widow of mortgagee not endowed.—A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

[R. S., 2455, pt. II, ch. 1, tit. II, § 7,
unchanged in substance.]

§ 176. When dower barred by misconduct.—In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

[R. S., 2455, pt. II, ch. 1, tit. III, § 8,
unchanged in substance.]

§ 177. When dower barred by jointure.—Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

[R. S., 2455, pt. II, ch. 1, tit. III, §§ 9, 10,
unchanged in substance.]

§ 178. When dower barred by pecuniary provisions.—Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all the lands of her husband.

[R. S., 2455, pt. II, ch. 1, tit. III, § 11,
unchanged in substance.]

§ 179. When widow to elect between jointure and dower.—If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

[R. S., 2455, pt. II, ch. 1, tit. III, § 12,
unchanged in substance.]

§ 180. Election between devise and dower.—If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

[R. S., 2455, pt. II, ch. 1, tit. III, § 13,
unchanged in substance.]

This section was amended by L. 1895, ch. 171, but restored by L. 1895, ch. 1022.]

§ 181. When deemed to have elected.—Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of one year after the death of her said husband, her ,

time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

[R. S., 2455, pt. II, ch. 1, tit. III, § 14, as am. by
L. 1890, ch. 61,
unchanged in substance.]

§ 182. When provision in lieu of dower is forfeited.—Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

[R. S., 2455, pt. II, ch. 1, tit. III, § 15,
unchanged in substance.]

§ 183. Effect of acts of husband.—An act, deed, or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

**[R. S., 2455, pt. II, ch. 1, tit. III, § 16,
unchanged in substance.]**

§ 184. Widow's quarantine.—A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

**[R. S., 2456, pt. II, ch. 1, tit. III, § 17,
unchanged in substance.]**

§ 185. Widow may bequeath a crop.—A woman may bequeath a crop in the ground of land held by her in dower.

**[R. S., 2456, pt. II, ch. 1, tit. III, § 25,
unchanged in substance.]**

§ 186. Divorced woman may release dower.—A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

[L. 1892, ch. 616. The original law provides that the release shall take effect upon the execution, delivery and recording of the release, together with the filing or recording in the proper office, of a certified copy of the judgment or decree granting the divorce.]

§ 187. Married woman may release dower by attorney.—A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

**[L. 1893, ch. 599; L. 1835, ch. 275,
unchanged in substance.]**

ARTICLE VI.

Landlord and Tenant.

Section 190. Action for use and occupation.

191. Rent due on life leases recoverable.

192. When rent is apportionable.

193. Rights where property or lease is transferred.

194. Attornment by tenant.

195. Notice of action adverse to possession of tenant.

196. Effect of renewal on sub-lease.

197. When tenant may surrender premises.

198. Termination of tenancies at will or by sufferance,
by notice.

199. Liability of tenant holding over after giving notice
of intention to quit.

200. Liability of tenant holding over after giving notice
to quit.

201. Liability of landlord where premises are occupied
for unlawful purpose.

202. Duration of certain agreements in New York.

Section 190. Action for use and occupation. — The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

**[R. S., 2459, pt. II, ch. 1, tit. IV, § 26,
unchanged in substance.]**

§ 191. Rent due on life leases recoverable. — Rent due on a lease for life or lives, is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

**[R. S., 2458, pt. II, ch. 1, tit. IV, §§ 19, 20, 21,
unchanged in substance.]**

§ 192. When rent is apportionable.—Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

[R. S., 2458, pt. II, ch 1, tit. IV, § 22,
modified to avoid some of the consequences of the decisions in *Fay v. Holloran*, 35 Barb. 295, *Marshall v. Moseley*, 21 N. Y. 280, that certain rents could not be apportioned. The modification seems to be in the direction of justice and the spirit of modern legislation on the subject.]

§ 193. Rights where property or lease is transferred.—The grantee of leased real property, or of a reversion thereof, or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

[R. S., 2459, pt. II, ch. 1, tit. IV, §§ 23, 24, 25,
Id., 2460, L. 1860, ch. 396,
unchanged in substance.]

§ 194. Attornment by tenant.—The attornment of a tenant to a stranger is absolutely void, and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,
2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or,
3. To a mortgagee, after the mortgage has become forfeited.

[R. S., 2457, pt. II, ch. 1, tit. IV, § 3,
unchanged.]

§ 195. Notice of action adverse to possession of tenant.—Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the value of three years' rent of such property, to the landlord or other person of whom he holds.

[R. S., 2459, pt. II, ch. 1, tit. IV, § 27,
unchanged in substance.]

§ 196. Effect of renewal on sub-lease.—The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

[R. S., 2457, pt. II, ch. 1, tit. IV, § 2,
unchanged in substance.]

§ 197. When tenant may surrender premises.—Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the

destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

[R. S., 2459, L. 1860, ch. 345,
unchanged in substance.]

§ 198. Termination of tenancies at will or by sufferance by notice.— A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may re-enter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

[R. S. 2457, pt. II, ch. 1, tit. IV, §§ 7, 8, 9,
unchanged in substance.]

§ 199. Liability of tenant holding over after giving notice of intention to quit.— If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continues in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

[R. S. 2457, pt. II, ch. 1, tit. IV, § 10,
unchanged in substance.]

§ 200. Liability of tenant holding over after giving notice to quit.— Where, on the termination of an estate for life, or for

years, the person entitled to the possession demands the same, and serves, in the same manner as for the termination of a tenancy at will, a written notice to quit, if the tenant, or any person in possession under him, or by collusion with him, willfully holds over, after the expiration of thirty days from such service, he must pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the property detained, for the time while he so detains the same, together with all damages incurred by the person so kept out by reason of such detention. There is no equitable defense or relief against a demand accrued, or a recovery had, under this section.

[R. S. 2457, pt. II, ch. 1, tit. IV, § 11,
unchanged in substance. See Code of Civil Procedure,
§ 2231, for summary proceedings.]

§ 201. Liability of landlord where premises are occupied for unlawful purpose.—The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

[R. S. 2460, L. 1873, ch. 583, § 2,
unchanged in substance.]

§ 202. Duration of certain agreements in New York.—An agreement, for the occupation of real property in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of May, next after the possession commences under the agreement; and rent thereunder is payable at the usual quarter days, for the payment of rent in that city, unless otherwise expressed in the agreement.

[R. S. 2456-7, pt. II, ch. 1, tit. IV, § 1,
unchanged in substance.]

ARTICLE VII.

Conveyances and Mortgages.

Section 205. Definitions and use of terms.

206. Livery of seizin abolished.

207. When written conveyance necessary.

208. Grant of fee or freehold.

209. When grant takes effect.

210. Estate which passes by grant or devise.

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214. Covenants in mortgages.

215. Mortgages on real property inherited or devised.

216. Covenants not implied.

217. Lineal and collateral warranties abolished.

218. Construction of covenants in grants of freehold interests.

219. Construction of covenants in mortgages and bonds.

220. Construction of grant of appurtenances and of all the rights and estate of grantor.

221. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.

222. Covenants to bind representatives of grantor and mortgagor and enure to the benefit of whom.

223. Short forms of deeds and mortgages.

224. When contract to lease or sell void.

225. Effect of grant or mortgage of real property adversely possessed.

226. Conveyances with intent to defraud purchasers and incumbrancers void.

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228. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.

Section 229. Fraudulent intent, question of fact.

230. Rights of purchaser or incumbrancer for valuable consideration protected.

231. Conveyances with power to revoke, determine or alter.

232. Disaffirmance of fraudulent act by executor and others.

233. When remainderman may pay interest owed by life tenant.

234. Powers of courts of equity not abridged.

§ 205. Definitions and use of terms.—The term “heirs,” or other words of inheritance, are not requisite to create or convey an estate in fee. The term “conveyance,” as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument, and is consistent with the rules of law. The terms “estate” and “interest in real property,” include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

**[R. S., 2593, pt. II, ch. 7, tit. III, §§ 6, 7,
R. S., 2461, pt. II, ch. 1, tit. V, §§ 1, 2,
R. S., 2449, pt. II, ch. 1, tit. II, § 114,
unchanged in substance.]**

§ 206. Livery of seizin abolished.—The conveyance of real property by feoffment, with livery of seizin, has been abolished.

**[R. S., 2451, pt. II, ch. 1, tit. II, § 136,
unchanged in substance.]**

§ 207. When written conveyance necessary.—An estate or interest in real property, other than a lease for a term not exceed-

ing one year, or any trust or power, over or concerning real property, or in any manner relating thereto, can not be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

【R. S., 2589, pt. II, ch. 7, tit. I, §§ 6, 7, as am. by

L. 1860, ch. 322,

unchanged in substance. Alienation by fine has been abolished. Const. art. 1, § 14. The reference to fines has been omitted.】

§ 208. Grant of fee or freehold.—A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or encumbrancer until so acknowledged.

【R. S., 2451, pt. II, ch. 1, tit. II, § 137,

unchanged in substance, except that the provision that a grant must be under seal is omitted. See *Voorhees v. Presb. Ch.*, 17 Barb. 108; *Roggen v. Avery*, 63 Id. 65.】

§ 209. When grant takes effect.—A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

【R. S., 2452, pt. II, ch. 1, tit. II, § 138,

unchanged in substance.】

§ 210. Estate which passes by grant or devise.—A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed ; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or encumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or encumbrancer, in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

[R. S., 2452, pt. II, ch. 1, tit. 2, art. 4, §§ 143, 144,
Id., 2461, pt. II, ch. 1, tit. V, § 1,
unchanged in substance.]

§ 211. Certain deeds declared grants.—Deeds of bargain and sale, and of lease and release, may continue to be used ; and are to be deemed grants, subject to all the provisions of law in relation thereto.

[R. S., 2452, pt. II, ch. 1, tit. II, § 142,
unchanged in substance.]

§ 212. Conveyance by tenant for life or years of greater estate than possessed.—A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

[R. S., 2452, pt. II, ch. 1, tit. II, § 145,
unchanged in substance.]

§ 213. Effect of conveyance where property is leased.—An attornment to a grantee is not requisite to the validity of a convey-

ance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

【R. S., 2453, pt. II, ch. 1, tit. II, § 146,
unchanged in substance.】

§ 214. Covenants in mortgages.— A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment, has not been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

【R. S. 2452, pt. II, ch. 1, tit. II, § 139,
unchanged in substance.】

§ 215. Mortgages on real property inherited or devised.— Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the mortgage out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

【R. S. 2461, pt. II, ch. 1, tit. V, § 4,
unchanged in substance.】

§ 216. Covenants not implied.— A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

【R. S. 2452, pt. II, ch. 1, tit. II, § 140,
unchanged in substance.】

§ 217. Lineal and collateral warranties abolished.— Lineal and collateral warranties, with all their incidents, have been abolished;

but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property descended or devised to them, in the cases and in the manner prescribed by law.

[R. S. 2452, pt. II, ch. 1, tit. II, § 141,
unchanged in substance.]

§ 218. Construction of covenants in grants of freehold interests.— In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. Seizin.— A covenant that the grantor “is seized of the said premises (described) in fee simple, and has good right to convey the same,” must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance, is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. Quiet enjoyment.— A covenant that the grantee “shall quietly enjoy the said premises,” must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. Freedom from incumbrances.— A covenant “that the said premises are free from incumbrances,” must be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

4. Further assurance.— A covenant that the grantor will “execute or procure any further necessary assurance of the title to said premises,” must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. Warranty of title.— A covenant that the grantor “will forever warrant the title” to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors, and assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. Grantor has not encumbered.— A covenant that the grantor “has not done or suffered anything whereby the said premises have been encumbered,” must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

[L. 1890, ch. 475, § 1,
unchanged in substance.]

§ 219. Construction of covenants in mortgages and bonds.— In mortgages of real property, and in bonds secured thereby, the following or similar covenants must be construed as follows:

1. Agreement that whole sum shall become due.—The words “and it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of interest for days, or after default in the payment of any tax or assessment for days, after notice and demand,” must be construed as meaning that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of days, or such tax or assessment remain unpaid and in arrear for days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

2. In default of payment, mortgagee to have power to sell.— A covenant that the mortgagor “will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee shall have power to sell the premises therein described, according to law,” must be construed as meaning that the mortgagor for himself, his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors

and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the said principal sum or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors and assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise, as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

3. Mortgagor to keep buildings insured.—A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall

at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable.

4. Mortgagor to give further assurance of title. — A covenant that the mortgagor “will execute any further necessary assurance of the title to said premises, and will forever warrant said title,” must be construed as meaning that the mortgagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

[L. 1890, ch. 475, § 4,
unchanged in substance.]

§ 220. Construction of grant of appurtenances and of all the rights and estate of grantor.—In any grant or mortgage of freehold interests in real estate, the words, “together with the appurtenances and all the estate and rights of the grantor in and to said premises,” must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy, and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said granted premises and every part and parcel thereof, with the appurtenances.

[L. 1890, ch. 475, § 2,
unchanged in substance.]

§ 221. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.—In any deed by an executor of, or trustee under a will, the words “together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise,” must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

[L. 1890, ch. 475, § 3,
unchanged in substance.]

§ 222. Covenants to bind representatives of grantor and mortgagor and enure to the benefit of whom.—All covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

[L. 1890, ch. 475, § 5,
unchanged in substance.]

§ 223. Short forms of deeds and mortgages.—The use of the following forms of instruments for the conveyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

SCHEDULE A.

Deed with Full Covenants.

This indenture, made the.....day of....., in the year eighteen hundred and....., between..... of (insert residence) of the first part, and of (insert residence) of the second part.

Witnesseth, that the said party of the first part, in consideration of dollars lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from incumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.

Executor's Deed.

This indenture, made the day of, eighteen hundred and between as executor of the last will and testament of, late of, deceased, of the first part, and of, of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of dollars, lawful money of the United States, paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description) together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has or has power to dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part covenants with said party of the second part that the party of the first part has not

done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE C.

Mortgage.

This indenture, made the day of, in the year eighteen hundred and, between of, party of the first part, and of, party of the second part.

Whereas, the said is justly indebted to the said party of the second part in the sum of dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of dollars, on the day of, eighteen hundred and, and the interest thereon, to be computed from at the rate of per centum per annum and to be paid

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided.

Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises.

To have and hold the above granted premises unto the said party of the second part, his heirs and assigns forever.

Provided always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part covenants with the party of the second part as follows:

1. That the party of the first part will pay the indebtedness as hereinafore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for days, or after default in the payment of any tax or assessment for days, after notice and demand.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In the presence of:

[L. 1890, ch. 475, § 6,
unchanged in substance.]

§ 224. When contract to lease or sell void.— A contract for the leasing for a longer period than one year, or for the sale of any real property, or an interest therein, is void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the lessor or grantor, or by his lawfully authorized agent.

[R. S. 2589-90, pt. II, ch. 7, tit. I, § 8-9,
unchanged in substance.]

§ 225. Effect of grant or mortgage of real property adversely possessed.— A grant of real property is absolutely void, if at the time of the delivery thereof, such property is in the actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively.

[R.S. 2453, pt. II, ch. 1, tit. II, §§ 147-148,
unchanged in substance.]

§ 226. Conveyances with intent to defraud purchasers and encumbrancers void.— A conveyance of an estate or interest in real property, or the rents and profits thereof, and every charge thereon, made or created with intent to defraud prior or subsequent purchasers or encumbrancers, for a valuable consideration, of the same real property, rents or profits, is void as against such purchasers and encumbrancers. Such a conveyance or charge shall not be deemed fraudulent in favor of a subsequent purchaser or encumbrancer, who, at the time of his purchase or encumbrance, has actual or legal notice thereof, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended.

[R. S. 2588, pt. II, ch. 7, tit. I, §§ 1-2,
unchanged in substance.]

§ 227. Conveyances with intent to defraud creditors void.— A conveyance or assignment in writing or otherwise, of an estate, interest, or existing trust in real property, or the rents or profits issuing therefrom, or a charge on real property, or on the rents or profits thereof, made with the intent to hinder, delay or defraud creditors, or other persons, of their lawful suits, damages, for-

feitures, debts or demands, or a bond or other evidence of debt given, suit commenced or decree or judgment suffered, with the like intent, is void as against every person so hindered, delayed or defrauded.

**[R. S. 2592, pt. II, ch. 7, tit. III, § 1,
unchanged in substance as far as the same relates to real
property.]**

§ 228. Conveyances void as to creditors, purchasers and encumbrancers, void as to heirs and assigns.— A conveyance, charge, instrument or proceeding, declared by this article to be void as against creditors, purchasers or encumbrancers, is equally void as against their heirs, successors, personal representatives or assigns.

**[R. S. 2593, pt. II, ch. 3, tit. III, § 3,
unchanged in substance.]**

§ 229. Fraudulent intent, question of fact.— The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or encumbrancers, solely on the ground that it was not founded on a valuable consideration.

**[R. S. pt. II, ch. 7, tit. III, § 4,
unchanged in substance.]**

§ 230. Rights of purchaser or encumbrancer for valuable consideration protected.— This article does not in any manner affect or impair the title of a purchaser or encumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

**[R. S. 2593, pt. II, ch. 7, tit. III, § 5,
unchanged in substance.]**

§ 231. Conveyances with power to revoke, determine or alter.— A conveyance of or charge on an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and encumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of the power reserved or expressed in the prior conveyance or charge.

Where a power to revoke a conveyance of real property or the rents and profits thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or encumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

If a conveyance to a purchaser or encumbrancer, under this section, be made before the person making it is entitled to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made.

[R. S., 2588-9, pt. II, ch. 7, tit. I, §§ 3, 4, 5,
unchanged in substance.]

§ 232. Disaffirmance of fraudulent act by executor and others.— An executor, administrator, receiver, assignee or other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or indi-

vidual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate.

A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

[R. S., 2594; L. 1858, ch. 314, as am. by
L. 1889, ch. 487 and
L. 1894, ch. 740,
unchanged in substance.]

§ 233. When remainderman may pay interest owed by life tenant.—Whenever real property held by any person for life is encumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

[L. 1894, ch. 315,
unchanged in substance.]

§ 234. Powers of courts of equity not abridged.—Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

[R. S., 2590, pt. II, ch. 7, tit. I, § 10,
unchanged in substance.]

ARTICLE VIII.

Recording Instruments Affecting Real Property.

Section 240. Definitions; effect of article.

241. Recording of conveyances.

242. By whom conveyance must be acknowledged or proved.

243. Recording of conveyances heretofore acknowledged or proved.

244. Recording executory contracts and powers of attorney.

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248. Acknowledgments and proofs within the state.

249. Acknowledgments and proofs in other states.

250. Acknowledgments and proofs in foreign countries

251. Acknowledgments and proofs by married women.

252. Requisites of acknowledgments.

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256. When certificate to state time and place.

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Section 266. Order of recording.

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269. Certain deeds deemed mortgages.

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272. Recording of conveyances made by treasurer of Connecticut.

273. Revocation to be recorded.

274. Penalty for using long forms of covenants.

275. Certain acts not affected.

276. Actions to have certain instruments cancelled of record.

277. Officers guilty of malfeasance liable for damages.

§ 240. Definitions; effect of article.— The term “real property” as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years. The term “purchaser,” includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate. The term “conveyance,” includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, and although the power be one of revocation only; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property. The term “recording officer,” means the county clerk of the county, except in the counties of New York, Kings or Westchester, where it means the register of the county.

This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

**[R. S. 2449, pt. II, ch. 1, tit. II, § 114;
R. S. 2475, pt. II, ch. 3, §§ 36, 37, 38, 39, 42, 43,
unchanged in substance, except that the operation of the
last paragraph is confined to leases heretofore made.]**

§ 241. Recording of conveyances.—A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the office of the clerk of the county where such real property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

**[R. S. 2469, pt. II, ch. 3, § 1,
unchanged in substance.**

In *Payner v. Wilson*, 15 Wend, 469, held: That the statute avoiding an unrecorded deed as against a purchaser in good faith, etc., applies only to successive purchasers from same grantor.]

§ 242. By whom conveyance must be acknowledged or proved.—Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

**[R. S. 2470, pt. II, ch. 3, § 4, in part,
unchanged in substance.]**

§ 243. Recording of conveyances heretofore acknowledged or proved.—A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but

which has not been recorded is entitled to be read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed.

If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.

**[R. S., pt. II, ch. 3, §§ 22, 23,
unchanged in substance.]**

§ 244. Recording executory contracts and powers of attorney.—An executory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated.

**[R. S., 2475, pt. II, ch. 3, § 39,
unchanged in substance.]**

§ 245. Recording of letters patent.—Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded.

**[R. S., 2478; L. 1845, ch. 110, § 1,
unchanged in substance.]**

§ 246. Recording copies of instruments which are in secretary of state's office.—A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate, in the office of any recording officer of the state.

**[R. S., 2476; L. 1839, ch. 295, § 5,
unchanged in substance.]**

§ 247. Certified copies may be recorded.—A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section two hundred and fifty-nine of this chapter were so recorded.

[R. S., 2477; L. 1843, ch. 210, § 5, as am. by
L. 1893, ch. 182,
unchanged in substance.]

§ 248. Acknowledgments and proofs within the state.—The acknowledgment or proof of a conveyance of real property within the state may be made at any place within the state, before a justice of the supreme court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds.

[R. S., 2470, pt. II, ch. 3, § 4, sub. 1,
unchanged in substance, except that mayors and recorders
are restricted to their respective cities.]

§ 249. Acknowledgments and proofs in other states.—The acknowledgment or proof of a conveyance of real property, within the state, may be made without the state, but within the United

States, before either of the following officers acting within his jurisdiction, or of the court to which he belongs:

1. A judge of the supreme court, of the circuit court of appeals, of the circuit court, or of the district court of the United States.
2. A judge of the supreme, superior, or circuit court of a state.
3. A mayor of a city.
4. A commissioner appointed for the purpose by the governor of the state.
5. Any officer of a state, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

[R. S., 2470, pt. II, ch. 3, § 4, sub. 2,
Id., 2476; L. 1829, ch. 222, part,
Id., 2477; L. 1845, ch. 109,
Id., 2478; L. 1848, ch. 195, § 1,
Id., 2479; L. 1850, ch. 270, § 1,
Id., 3315; L. 1892, ch. 208, § 1,
unchanged in substance. See executive L. §§ 87-88.]

§ 250. Acknowledgments and proofs in foreign countries.—The acknowledgment and proof of a conveyance of real property within the state, may be made without the United States before either of the following officers:

1. An ambassador, a minister plenipotentiary, minister extraordinary, minister resident, or charge des affairs of the United States, residing and accredited within the country.
2. A consul-general, vice-consul general, deputy consul-general, vice-consul or deputy-consul, a consular or vice-consular agent, or a consul or commercial or vice-commercial agent of the United states, residing within the country.
3. A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.
4. A person specially authorized for that purpose by a commission, under the seal of the supreme court, issued to a reputable person, residing in or going to the country where the acknowledgment or proof is so to be taken.

5. If within the dominion of Canada, it may also be made before any judge of a court of record; or before any officer of such dominion authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

6. If within the United Kingdom of Great Britain and Ireland or the dominions thereunto belonging, it may also be made before the mayor, provost or other chief magistrate of a city or town therein.

[R. S., 2470, pt. II, ch. 3, §§ 5, 6, 7, 8, as am. by L. 1883, ch. 80, Id., 2476; L. 1829, ch. 222, Id., 2482; L. 1863, ch. 246, as am. by L. 1888, ch. 246, Id., 2483; L. 1870, ch. 208, L. 1893, ch. 123,

While this bill was pending in the legislature, another bill passed both houses, giving to a "vice-consul-general or a deputy consul-general" the same power to take acknowledgments as that possessed by a consul-general. The legislature, therefore, amended this section accordingly.]

§ 251. Acknowledgments and proofs by married women. — The acknowledgment or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

[R. S., 2471, pt. II, ch. 3, §§ 10, 11, Id., 2487; L. 1879, ch. 249, as am. by L. 1880, ch. 300, unchanged in substance.]

§ 252. Requisites of acknowledgments. — An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

[R. S., 2471, pt. II, ch. 3, § 9, unchanged in substance.]

§ 253. Proof by subscribing witness. — Where the execution of a conveyance is proved by a subscribing witness, such witness

must state his own place of residence, and that he knew the person described in and who executed the conveyance.

The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

**[R. S., 2472, pt. II, ch. 3, § 12,
unchanged in substance.]**

§ 254. Compelling witnesses to testify.—On the application of a grantee in a conveyance, his heir or personal representative, or of a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such conveyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpoena, requiring such witness to attend and testify before him concerning the execution of the conveyance. A person who, on being duly served with such a subpoena, without reasonable cause refuses or neglects to attend or refuses to answer under oath concerning the execution of such conveyance, forfeits to the person injured one hundred dollars; and may also be committed to prison by the officer who issued the subpoena, there to remain without bail, and without the liberties of the jail, until he answers under oath as required by this section.

**[R. S., 2472, pt. II, ch. 3, §§ 13, 14,
unchanged in substance, except that the provision excepting commissioners of deeds from the officers who may issue subpoenas has been omitted.]**

§ 255. Certificate of acknowledgment or proof.—An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known or proved on the taking of such acknowledgment or proof; together with the name

and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

[R. S., 2472, pt. II, ch. 3, § 15,
unchanged in substance.]

§ 256. When certificate to state time and place.—Where the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the town and county or the city in which, the same was taken.

[R. S., 2480; L. 1850, ch. 270, § 5, as am. by
L. 1880, ch. 115,
unchanged in substance. See Executive L. § 88.]

§ 257. When certificate must be under seal.—Where a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without the United States, or by a minister, charge des affairs, consul-general, vice-consul-general, deputy-consul-general, vice-consul or deputy consul, consular or vice-consular agent, or consul or commercial or vice-commercial agent, of the United States, it must be under his seal of office, or the seal of the consulate to which he is attached.

All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificates of which were made in the form required by the laws of this state, by a consul-general, vice-consul-general, deputy-consul-general, vice-consul, deputy-consul, consular agent, vice-consular agent, consul or commercial agent or vice-commercial agent of the United States prior to the first day of April, eighteen hundred and ninety-six, are confirmed.

[R. S., 2471, pt. II, ch. 3, § 7,
Id., 2482; L. 1863, ch. 246, §§ 1, 2,
Id., 2485; L. 1875, ch. 136, § 1,

See note to § 250. The date of April 1, 1896 was also fixed by the bill there referred to.]

§ 258. Acknowledgment by corporation and form of certificate.—The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

State of New York,
County of, } ss.:

On the.....day of.....in the year....., before me personally came..... to me known, who, being by me duly sworn, did depose and say that he resided in.....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

[New.]

§ 259. When county clerk's authentication necessary.—A certificate of acknowledgment or proof, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except within the county in which the officer resides at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county. But this section does not apply to a conveyance executed by an agent for the Holland Land company, or of the Pulteney estate, lawfully authorized to convey real property.

[R. S., 2472-3, pt. II, ch. 3, §§ 18 in part, 19, unchanged in substance.]

§ 260. When other authentication necessary.— In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by the following officers, respectively:

1. Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the governor, by the secretary of state.

2. Where made by a judge of a court of record in Canada, by the clerk of the court.

3. Where made by the officer of a state of the United States, or of the dominion of Canada authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, or the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resided, when the certificate was made, or by the clerk of any court of that county, having by law a seal.

[R. S., 2479; L. 1850, ch. 270, § 4,
R. S., 2483; L. 1870, ch. 208, § 1,
R. S., 2485; L. 1875, ch. 136, § 2,
R. S., 2479; L. 1848, ch. 195, § 2, as am. by
L. 1894, ch. 729,
unchanged in substance.]

§ 261. Contents of certificate of authentication.— An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that, at the time of taking the acknowledgment or proof, the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer; and that he verily believes the signature to the original certificate is genuine; and if the original certificate is required to be under

seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is genuine.

A clerk's certificate authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledgment of proof was taken, was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine.

[R. S., 2480; L. 1850, ch. 270, § 4,
R. S., 2485; L. 1875, ch. 136, § 2,
R. S., 2479; L. 1848, ch. 195, § 2, as am. by L. 1867, ch. 557,
Id., 2483; L. 1870, ch. 208, § 1,
unchanged in substance.]

§ 262. Recording of conveyances acknowledged or proved without the state, where parties and certifying officer are dead.—Where the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or indorsed upon the instrument, if such officer and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state.

To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or protho-

notary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

[R. S. 2480, L. 1858, ch. 259, §§ 1, 2;
unchanged in substance.]

§ 263. Proof where witnesses are dead.— Where the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of each witness examined, must be set forth by the officer taking the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not entitle the conveyance or the record thereof, or a transcript of the record to be read in evidence.

[R. S. 2474, pt. II, ch. 3, §§ 30-33,
unchanged in substance.]

§ 264. Recording books.— Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets, he must record all conveyances and other instruments absolute in their terms delivered to him, pursuant to law, to be so recorded, which are not intended as mortgages, or securities in the nature of mortgages, and in the other set, such mortgages and securities delivered to him.

[R. S. 2470, pt. II, ch. 3, § 2,
unchanged in substance.]

§ 265. Indexes.— Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the books of record in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages, and another set for conveyances and other instruments not intended as such mortgages or securities. Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees, and the other list consisting of the names of the grantees or mortgagees, followed by the names of their grantors or mortgagors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record.

This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes.

A recording officer who records a conveyance of real property, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the head "grantors," the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

**[R. S., 2477; L. 1843, ch. 199, §§ 1-3,
unchanged in substance. The last paragraph is new and
seems to be a desirable provision, conforming the law to
§ 1244, Code Civil Procedure.]**

§ 266. Order of recording.—Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery.

**[R. S., 2473, pt. II, ch. 3, § 24,
unchanged in substance.]**

§ 267. Certificate to be recorded.—The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

**[R. S., 2473, pt. II, ch. 3, § 20,
unchanged in substance.]**

§ 268. Time of recording.—The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must indorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

**[R. S., 2473, pt. II, ch. 3, § 25,
unchanged in substance.]**

§ 269. Certain deeds deemed mortgages.—A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every

writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

[R. S., 2470, pt. II, ch. 3, § 3,
unchanged in substance.]

§ 270. Recording discharge of mortgage.—A mortgage, registered or recorded, must be discharged upon the record thereof, by the recording officer, when there is presented to him a certificate signed by the mortgagee, his personal representative or assignee, and acknowledged or proved, and certified, in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded; and a reference must be made to the book and page containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof.

[R. S., 2474, pt. II, ch. 3, §§ 28, 29,
unchanged in substance.]

§ 271. Effect of recording assignment of mortgage.—The recording of an assignment of a mortgage is not in itself, a notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate a payment made by either of them to the mortgagee.

[R. S., 2476, pt. II, ch. 3, § 41,
unchanged in substance].

§ 272. Recording of conveyances made by treasurer of Connecticut.—A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the state of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the

seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

**[R. S., 2473, pt. II, ch. 3, § 21,
unchanged in substance.]**

§ 273. Revocation to be recorded.—A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

**[R. S., 2476, pt. II, ch 3, § 40,
unchanged in substance.]**

§ 274. Penalty for using long forms of covenants.—The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in sections two hundred and eighteen and two hundred and nineteen of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

**[L. 1890, ch. 475, § 7,
unchanged in substance, except that instead of being confined to the counties of New York and Kings, the penalty is extended to the whole state.]**

§ 275. Certain acts not affected.—Nothing contained in this article repeals or affects any act providing for recording and indexing instruments affecting real property in the city of New York, according to city blocks or other limited areas.

[New; inserted for greater caution.]

§ 276. Actions to have certain instruments cancelled of record.—An owner of real property or of any undivided part thereof

or interest therein, may maintain an action to have any recorded instrument in writing relating to the same, other than those required by law to be recorded, declared void or invalid, or to have the same cancelled of record as to said real property, or his undivided part thereof or interest therein.

[R. S., 2487, L. 1880, ch. 530, § 1,
unchanged in substance.]

§ 277. Officers guilty of malfeasance liable for damages.—An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

[R. S., 2475, pt. II, ch. 3, § 35,
unchanged in substance. The penal provision has been omitted, as it is believed the same is fully covered by sections 117, 154, 162, 163, 164, Penal Code.]

ARTICLE IX.

The Descent of Real Property.

Section 280. Definitions and use of terms; effect of article.

281. General rule of descent.

282. Lineal descendants of equal degree.

283. Lineal descendants of unequal degree.

284. When father inherits.

285. When mother inherits.

286. When collateral relatives inherit; collateral relatives of equal degrees.

287. Brothers and sisters and their descendants.

288. Brothers and sisters of father and mother and their descendants.

289. Illegitimate children.

290. Relatives of the half-blood.

291. Cases not hereinbefore provided for.

292. Posthumous children and relatives.

Section 293. Inheritance, sole or in common.

294. Alienism of ancestor.

295. Advancements.

296. How advancements adjusted.

§ 280. Definitions and use of terms; effect of article.—The term “real property” as used in this article, includes every estate, interest and right, legal and equitable in lands, tenements and hereditaments except such as are determined or extinguished by the death of an intestate seized or possessed thereof, or in any manner entitled thereto; leases for years, estates for the life of another person; and real property held in trust, not devised by the beneficiary. “Inheritance” means real property as herein defined, descended according to the provisions of this article; the expressions “where the inheritance shall have come to the intestate on the part of the father” or “mother,” as the case may be, include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.

When in this article a person is described as living, it means living at the time of the death of the intestate from whom the descent came; when he is described as having died, it means that he died before such intestate.

This article does not affect a limitation of an estate by deed or will, or tenancy by the curtesy of dower.

[R. S. 2466, 2467, pt. II, ch. 2, §§ 20, 21, 27, 28, 29,
unchanged in substance.]

§ 281. General rule of descent.—The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants.
2. To his father.
3. To his mother; and
4. To his collateral relatives,

as prescribed in the following sections of this article.

[R. S. 2463, pt. II, ch. 2, § 1,
unchanged in substance.]

§ 282. Lineal descendants of equal degree.— If the intestate leave descendants in the direct line of lineal descent, all of equal degree of consanguinity to him, the inheritance shall descend to them in equal parts however remote from him the common degree of consanguinity may be.

[R. S., 2463, pt. II, ch. 2, § 2,
unchanged in substance.]

§ 283. Lineal descendants of unequal degree.— If any of the descendants of such intestate be living, and any be dead, the inheritance shall descend to the living, and the descendants of the dead, so that each living descendant shall inherit such share as would have descended to him had all the descendants in the same degree of consanguinity who shall have died leaving issue been living; and so that issue of the descendants who shall have died shall respectively take the shares which their ancestor would have received.

[R. S., 2463, 2464, pt. II, ch. 2, §§ 3, 4,
unchanged in substance.]

§ 284. When father inherits.— If the intestate die without lawful descendants, and leave a father, the inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, and she be living; if she be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

[R. S., 2464, pt. II, ch. 2, § 5, as am. by
L. 1830, ch. 320, § 13,
unchanged in substance.]

§ 285. When mother inherits.— If the intestate die without descendants and leave no father, or leave a father not entitled

to take the inheritance under the last section, and leave a mother, and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

[R. S., 2464, pt. II, ch. 2, § 6,
unchanged in substance.]

§ 286. When collateral relatives inherit; collateral relatives of equal degrees.— If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from him the common degree of consanguinity may be.

[R. S., 2464, pt. II, ch. 2, § 7,
unchanged in substance.]

§ 287. Brothers and sisters and their descendants.— If all the brothers and sisters of the intestate be living, the inheritance shall descend to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants, in whatever degree, of those dead; so that each living brother or sister shall inherit such share as would have descended to him or her if all the brothers and sisters of the intestate who shall have died, leaving issue, had been living, and so that such descendants in whatever degree shall collectively inherit the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

[R. S., 2464, 2465, pt. II, ch. 2, §§ 8, 9,
The word “collectively” was inserted by the legislature.]

§ 288. Brothers and sisters of father and mother and their descendants.— If there be no heir entitled to take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of his father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living.

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants.

But, if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid.

If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner.

In all cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner as if they had been the brothers and sisters of the intestate.

[R. S., 2465, pt. II, ch. 2, §§ 10, 11, 12, 13,
unchanged in substance.]

§ 289. Illegitimate children.—If an intestate who shall have been illegitimate die without lawful issue, or illegitimate issue entitled to take, under this section, the inheritance shall descend

to his mother; if she be dead, to his relatives on her part, as if he had been legitimate.

If a woman die without lawful issue, leaving an illegitimate child, the inheritance shall descend to him as if he were legitimate.

In any other case illegitimate children or relatives shall not inherit.

**[R. S., 2465, pt. II, ch. 2, §§ 14, 19,
R. S., 2468, L. 1855, ch. 547, § 1,
unchanged in substance.]**

§ 290. Relatives of the half-blood.—Relatives of the half-blood and their descendants, shall inherit equally with those of the whole blood and their descendants, in the same degree, unless the inheritance came to the intestate by descent, devise or gift from an ancestor; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

**[R. S., 2465, pt. II, ch. 2, § 15,
unchanged in substance.]**

§ 291. Cases not hereinbefore provided for.—In all cases not provided for by the preceding sections of this article, the inheritance shall descend according to the course of the common law.

**[R. S., 2466, pt. II, ch. 2, § 16,
unchanged in substance.]**

§ 292. Posthumous children and relatives.—A descendant or a relative of the intestate begotten before his death, but born thereafter, shall inherit in the same manner as if he had been born in the lifetime of the intestate and had survived him.

**[R. S., 2466, pt. II, ch. 2, § 18,
unchanged in substance.]**

§ 293. Inheritance, sole or in common.— When there is but one person entitled to inherit, he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall take as tenants in common, in proportion to their respective rights.

[R. S., 2466, pt. II, ch. 2, § 17,
unchanged in substance.]

§ 294. Alienism of ancestor.— A person capable of inheriting under the provisions of this article, shall not be precluded from such inheritance by reason of the alienism of an ancestor.

[R. S., 2466, pt. II, ch. 2, § 22,
unchanged in substance.]

§ 295. Advancements.— If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible to his heirs and to be distributed to his next of kin; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants shall receive so much, only, of the personal property, and inherit so much only of the real property, of the intestate, as shall be sufficient to make all the shares of all the children in the whole property, including the advancement, equal.

The value of any real or personal property so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given.

Maintaining or educating a child, or giving him money without a view to a portion or settlement in life is not an advancement.

and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

【R. S., 2472, pt. II, ch. 3, § 15,
unchanged in substance.】

§ 256. When certificate to state time and place.—Where the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the town and county or the city in which, the same was taken.

【R. S., 2480; L. 1850, ch. 270, § 5, as am. by
L. 1880, ch. 115,
unchanged in substance. See Executive L. § 88.】

§ 257. When certificate must be under seal.—Where a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without the United States, or by a minister, charge des affaires, consul-general, vice-consul-general, deputy-consul-general, vice-consul or deputy consul, consular or vice-consular agent, or consul or commercial or vice-commercial agent, of the United States, it must be under his seal of office, or the seal of the consulate to which he is attached.

All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificates of which were made in the form required by the laws of this state, by a consul-general, vice-consul-general, deputy-consul-general, vice-consul, deputy-consul, consular agent, vice-consular agent, consul or commercial agent or vice-commercial agent of the United States prior to the first day of April, eighteen hundred and ninety-six, are confirmed.

【R. S., 2471, pt. II, ch. 3, § 7,
Id., 2482; L. 1863, ch. 246, §§ 1, 2,
Id., 2485; L. 1875, ch. 136, § 1,

See note to § 250. The date of April 1, 1896 was also fixed by the bill there referred to.】

SCHEDULE OF LAWS REPEALED.

Revised Statutes, part II, chapters 1, 2, 3... All, except §§ 5, 6, 7 of tit. I of ch. 1, and § 63, tit. II, ch. 1.

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THE DOMESTIC RELATIONS LAW.

THE DOMESTIC RELATIONS LAW.

[This bill became ch. 272 of the Laws of 1896.]

REVISERS' NOTE, EXPLANATORY OF THE DOMESTIC RELATIONS LAW.

This chapter combines the provisions of existing statutes relating to marriages, the rights and liabilities of husband and wife, the custody of children, guardian and ward and master and apprentice or servant.

No attempt has been made to change the substantive law of these relations or codify the common law. The provisions of article 3, which relates to the rights and liabilities of husband and wife, are an attempt to re-state in simplified form, the contents of the great mass of statutes, enacted since 1848, changing the legal status of a married woman and her property with regard to her husband and the world.

Article 6, which relates to adoption, is composed of the provisions of chapter 830 of the laws of 1873, and several subsequent statutes, the only material change from existing law being found in the clauses which uniformly vest the power of legalizing and abrogation adoption in county judges and surrogates, this seeming preferable to the existing lack of system, under which certain orders may be made by one or the other of these officers, and still others by justices of the supreme court.

The seventh article relating to apprentices and servants, is an attempt to reconcile and condense the varying and somewhat contradictory provisions of the two laws on the subject now to be found side by side on the statute books, viz.: article first and

third, title 4, chapter 8, part II of the revised statutes and chapter 934 of the laws of 1871.

The table following this chapter indicates, in a general way, the disposition in the revision or otherwise of each act repealed.

Respectfully submitted.

CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON,
A. JUDD NORTHRUP.

Dated, January 8, 1896.

THE DOMESTIC RELATIONS LAW.

AN ACT relating to the domestic relations, constituting chapter forty-eight of the general laws.

Became a law April 17, 1896, with the approval of the Governor. Passed, three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER XLVIII OF THE GENERAL LAWS.

The Domestic Relations Law.

- Article 1.** Unlawful marriages. (§§ 1-4.)
2. Solemnization, proof and effect of marriage. (§§ 10-16.)
 3. Certain rights and liabilities of husband and wife. (§§ 20-29.)
 4. The custody and wages of children. (§§ 40-42.)
 5. Guardians. (§§ 50-54.)
 6. The adoption of children. (§§ 60-68.)
 7. Apprentices and servants. (§§ 70-77.)
 8. Laws repealed; when to take effect. (§§ 90-91.)

ARTICLE I.

Unlawful Marriages.

- Section 1.** Short title; definitions.
2. Incestuous and void marriages.
 3. Void marriages.
 4. Voidable marriages.

Section 1. Short title; definitions.—This chapter shall be known as the domestic relations law. A minor is a person under

the age of twenty-one years. A minor reaches majority at that age.

[New.]

§ 2. Incestuous and void marriages.— A marriage is incestuous and void whether the relatives are legitimate or illegitimate between, either:

1. An ancestor and descendent, or,
2. A brother and sister of either the whole or the half blood.
3. An uncle and niece or an aunt and nephew.

**[R. S., 2596, pt. II, ch. VIII, tit. I, § 3, as am. by
L. 1893, ch. 601,
without change of substance.]**

§ 3. Void marriages.— A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

1. Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person;
2. Such former husband or wife has been finally sentenced to imprisonment for life;
3. Such former husband or wife has absented himself or herself for five successive years then last past without being known to such person to be living during that time.

**[R. S., 2596, pt. II, ch. VIII, tit. I, §§ 5, 6,
without change of substance.]**

§ 4. Voidable marriages.— A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

1. Is under the age of legal consent, which is eighteen years,
2. Is incapable of consenting to a marriage for want of understanding,
3. Is incapable of entering into the marriage state from physical cause,

4. Consents to such marriage by reason of force, duress, or fraud; or,

5. Has a husband or a wife by a former marriage living, and such former husband or wife has absented himself or herself for five successive years then last past without being known to such party to be living during that time.

Actions to annul a void or voidable marriage may be brought only as provided in the code of civil procedure.

[R. S., 2596, pt. II, ch. VIII, tit. I, §§ 2, 4, 6,
L. 1887, ch. 24.

The word "duress" is inserted in the fourth subdivision in accordance with § 1743 of the code of civil procedure. The age of legal consent to marriage is raised to eighteen years in the case of females, to conform to § 282 of the penal code, as am. by L. 1895, ch. 460, which makes it abduction to marry a woman under eighteen years of age without the consent of her parents. See civil code, § 1742. Sections 1742, 1744 and 1745 of the code of civil procedure prescribe at whose instance and under what circumstances an action to annul a marriage may be brought.]

ARTICLE II.

Solemnization, Proof and Effect of Marriage.

Section 10. Marriage a civil contract; effect of this article.

11. Who may solemnize marriage.

12. Marriage, how solemnized.

13. Duty of clergyman or magistrate.

14. Certificate.

15. Filing and entry of certificate.

16. Certificate, entry and copies evidence.

17. Fees.

18. Effect of marriage of parents on illegitimates.

§ 10. Marriage a civil contract; effect of this article.— Marriage, so far as its validity in law is concerned, continues to be a civil contract, to which the consent of parties, capable in law of making the contract, is essential. This article does not require

any marriage to be solemnized in the manner herein specified, and a lawful marriage contracted in the manner heretofore in use in this state, or in the manner and pursuant to the regulations of a religious society to which either party belongs, is as valid as if this article had not been enacted.

**[R. S., 2595, 2596, pt. II, ch. 8, tit. I, §§ 1, 19,
L. 1887, ch. 77,**

without change of substance except that the provision which authorizes Quakers to solemnize marriage in the manner prescribed by the regulations of such society is extended to all religious societies.]

§ 11. Who may solemnize marriage.—For the purpose of being registered and authenticated as prescribed by this article, a marriage must be solemnized by either:

1. A clergyman or minister of any religion, or the leader of the society for ethical culture in the city of New York;
2. A mayor, recorder, alderman, police justice or police magistrate of a city; or,
3. A justice or judge of a court of record, or of a municipal court, a justice of the peace, or a justice of a district court in the cities of New York and Brooklyn.

The word “clergyman,” when used in the following sections of this article, includes any person referred to in the first subdivision of this section; the word “magistrate,” when so used, includes any person referred to in the second or third subdivision.

**[R. S., 2596, pt. II, ch. 8, tit. I, § 8,
L. 1887, ch. 430, § 1,
L. 1887, ch. 77,
L. 1888, ch. 78.
L. 1889, ch. 415,
L. 1893, ch. 242,**

Police justices in all cities and judges of municipal courts are authorized to solemnize marriage.]

§ 12. Marriage, how solemnized.—No particular form or ceremony is required when a marriage is solemnized as herein provided, by a clergyman or magistrate, but the parties must solemnly declare in the presence of the clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness besides the clergyman or magistrate must be present at the ceremony.

[R. S., 2597, pt. II, ch. 8, tit. I, § 9,

The original law provides that where a ceremony is performed by a clergyman it shall be according to the forms and customs of the church to which he belongs. Omitted, as being a subject for ecclesiastical control.]

§ 13. Duty of clergyman or magistrate.—A clergyman or magistrate requested to solemnize a marriage must, before solemnizing it, ascertain:

1. The name and residence of each party.
2. That each party is of sufficient age to be capable in law of contracting marriage.
3. The name and residence of the attending witness, or, if more than one are present, of at least two attending witnesses.

Unless such facts are personally known to him, he must require them to be proved, and for that purpose may administer an oath to and examine either or both of the parties or any other person. Each examination so taken must be reduced to writing, subscribed by the person examined, and entered in a book kept by the clergyman or magistrate for that purpose; in which he must also enter each fact required to be ascertained by this section which is within his knowledge, and the day on which the marriage is solemnized.

[R. S., 2597, pt. II, ch. 8, tit. I, §§ 10-11,

L. 1830, ch. 320, § 25,

L. 1873, ch. 25,

without change of substance. The provision of § 11 making false swearing perjury, is covered by penal code § 96.]

§ 14. Certificate.— A clergyman or magistrate by whom a marriage is solemnized must furnish to either party, on request, a certificate, signed by him, stating:

1. The name and place of residence of each of the parties; that they were known to him, or had satisfactorily proved by their oaths or the oath of a person known to him, that they were the persons described in the certificate and that they had attained the age of legal consent.

2. The name and place of residence of the attending witness, or, if more than one is present, of at least two attending witnesses.

3. The time and place of the marriage.

4. That after due inquiry made, there appeared to be no legal impediment to the marriage.

[R. S., 2597, pt. II, ch. 8, tit. I, § 13,
L. 1873, ch. 25,
without change of substance.]

§ 15. Filing and entry of certificate.— On the presentation of such certificate signed by such magistrate or clergyman, within six months after the marriage, to the clerk of the city or town in which the marriage was solemnized, or in which either party resided at the time of the marriage or resides when the certificate is presented, such clerk must file in his office and enter in a book kept by him for that purpose in the alphabetical order of the initial letter of the surname of each party and in the order of time in which the certificate is filed:

1. The names and places of residence of the person married.

2. The time and place of marriage.

3. The name and official station of the person signing the certificate.

4. The date of filing the certificate.

[R. S., 2598, pt. II, ch. VIII, tit. I, §§ 14, 15, 16.
L. 1830, ch. 320,

without change of substance, except that acknowledgment of clergymen is not required.]

16. Certificate, entry and copies evidence.—Such certificate or magister entry, or a copy of either certified by the officer with whom such certificate is filed, is presumptive evidence of the marriage.

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§ 17. Fees.—Fees for services rendered under this chapter may be collected as follows:

For solemnizing a marriage including the certificate thereof, one dollar.

For administering an oath and taking an examination as prescribed in section thirteen, fifty cents for each person examined.

For filing and entering a certificate, twenty-five cents.

For a certified copy of a certificate or entry, ten cents.

[R. S., 2598, pt. II, ch. VIII, tit. I, § 18.

The first two paragraphs allowing a fee of one dollar for performing a marriage and fifty cents for each witness examined, are new.]

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§ 18. Effect of marriage of parents on illegitimates.—An illegitimate child whose parents have heretofore intermarried, or shall hereafter intermarry, shall thereby become legitimized and shall be considered legitimate for all purposes, entitled to all the rights and privileges of a legitimate child; but an estate or interest vested before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimized.

§ 19. [L. 1895, ch. 531,
without change of substance.]

ARTICLE III.

Certain Rights and Liabilities of Husband and Wife.

Section 20. Property of married woman.

21. Powers of married women.

22. Insurance of husband's life.

23. Contracts in contemplation of marriage.

Section 24. Liability of husband for ante-nuptial debts.

25. Contract of married woman not to bind husband.

26. Husband and wife may convey to each other or make partition.

27. Rights of action by and against married woman for torts.

28. Pardon not to restore to marital rights.

29. Compelling transfer of trust property.

Section 20. Property of married woman.—Property, real or personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this chapter, and the rents, issues, proceeds and profits thereof continues to be her sole and separate property as if she were unmarried, and is not subject to her husband's control or disposal nor liable for his debts, [except such debts as she contracts as his agent for the support of herself or her children; and such a debt shall not be enforced against her separate property, unless in consequence of her husband's insolvency it can not be at the end of the section.]

[R. S., 2601, L. 1848, ch. 200, §§ 1, 2,

Id., 2603, L. 1860, ch. 90, § 1.

Laws of 1848, chapter 200, provided that the property of a married woman at the time of her marriage, or thereafter acquired, "shall not be subject to the disposal of her husband or be liable for his debts." The act of 1860, chapter 90, went as far as the act of 1848, in allowing a married woman to hold property as her separate estate, and provided that it should not be liable for the debts of her husband, "except such debts as may have been contracted for the support of herself or her children, by her as his agent." This exception has been frequently before the courts for construction. That a wife's property could be held liable for her husband's debts merely because they happened to be contracted by her as his agent has appeared to the courts to be inconsistent with the general tendency of modern legislation. In the case of *Demmott v. McMullen* (N. Y. Sp. C., 1869) 8 Abb. Pr.,

R. 335, the court argued that the Legislature had not said what it intended to say; that it intended to say, "by her husband as her agent," but the court was forced to admit that if the plaintiff had brought his case within the strict letter of the law he might have recovered. In *Covert v. Hughes*, 8 Hun, 305, Judge Learned says: "I suppose that the Legislature thought it would be unjust when a married woman should actually purchase food and clothing for herself and her children, that the creditor should not be allowed to collect the debt out of her property, because the purchase had been made as the agent of the husband." In 85 N. Y. 516 (*Tee-meyer v. Turnquist*), although the recovery of the plaintiff was based upon the fact that the separate estate of the wife was charged with the debt, Judge Finch discusses this exception, declaring that it did not render the wife personally liable for the debt contracted by her as her husband's agent, but that "The sole effect of the provision is not to make her personally liable for her husband's debt, * * * but merely that the shield and protection thrown over her property against the debts of her husband shall be withdrawn in a case where his debt has been contracted * * * through her acting as his agent, and for the purpose of providing for her own support and that of the children." This case was followed in *Strong v. Moul* (General Term, 1889), 4 Supp. 299, where an action was brought directly against the wife for a debt of this nature, the court holding that she was not personally liable, or, in other words, that the action must first be brought against the husband, and execution returned unsatisfied before the action can be brought against her for the debt. In *Edwards v. Woods* (1892), 131 N. Y. 350, it was held that an execution can not issue against the wife upon a judgment for such a debt rendered against her husband, but the debt must be enforced against her in proceedings instituted for that purpose, and that the liability must first be adjudged in an action to which she is a party, and in which she has had an opportunity to be heard.

It will thus be seen that in no case, unless it be that of *Covert v. Hughes*, has the exception been squarely before a court for adjudication. In every case the court has been able to decide

the action upon other grounds. The debt is the debt of the husband, although contracted by the wife as his agent. It is difficult to see why the fact that it was contracted for the support of herself or her children should render her liable merely because she happened to act as her husband's agent. If the debt had been contracted by him personally her property would not be liable. Judge Andrews said, in the case of *Edwards v. Woods*: "In view of the custom of families, when the husband leaves the management of the household to his wife, and commits to her the discretion to make purchases for the house and to supply her wants and those of her children, the broad construction claimed for this section of the act of 1860 opens a wide door of departure from the policy of the acts for protecting the property of married women."

It seems to the commissioners that the provision should no longer be retained in the statutes; that if the wife is to be held liable for necessities supplied to her it should be only when they are purchased by her upon her own account; that if the credit is extended to the husband, she acting merely as his agent, his estate, and his estate only, shall be liable for the debt. If the provision should, however, be retained, the commissioners recommend that the clause should be added, in accordance with the decisions of the courts that only in the case of the insolvency of the husband, appearing from an execution returned unsatisfied, shall the wife's estate be liable. But the commission recommend that the exception be repealed without re-enactment. The recommendation of the commission was followed by the legislature, which struck out of the original bill the matter in brackets at the end of the section.】

§ 21. Powers of married woman.—A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she

were unmarried; but a husband and wife can not contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife.

[R. S., 2600, L. 1835, ch. 275,
R. S., 2601, L. 1848, ch. 200, § 3,
R. S., 2602, L. 1851, ch. 321,
R. S., 2603, L. 1860, ch. 90, §§ 1, 2, 3,
R. S., 2605, L. 1878, ch. 300,
R. S., 2606, L. 1884, ch. 381,
L. 1892, ch. 594.

The commissioners believe that no substantial change is effected by the consolidation of several acts in this section.]

§ 22. Insurance of husband's life.—A married woman may, in her own name, or in the name of a third person, with his consent, as her trustee, cause the life of her husband to be insured for a definite period, or for the term of his natural life. Where a married woman survives such period or term she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband, except, that where the premium actually paid annually out of the husband's property exceeds five hundred dollars, that portion of the insurance money which is purchased by excess of premium above five hundred dollars, is primarily liable for the husband's debts. The policy may provide that the insurance, if the married woman dies before it becomes due and without disposing of it, shall be paid to her husband or to his, her or their children, or to or for the use of one or more of those persons; and it may designate one or more trustees for a child or children to receive and manage such money until such child or children attain full age. The married woman may dispose of such policy by will or written acknowledged assignment to take effect on her death, if she dies thereafter leaving no descendant surviving. After the will or the assignment takes effect, the legatee or assignee takes such policy absolutely.

A policy of insurance on the life of any person for the benefit of a married woman, is also assignable and may be surrendered to the company issuing the same, by her, or her legal representative, with the written consent of the assured.

**[R. S., 2600, L. 1840, ch. 80,
R. S., 2602, 2603, L. 1858, ch. 187, §§ 1, 2,
R. S., 2604, L. 1870, ch. 277,
R. S., 2605, L. 1879, ch. 248,
without change of substance, except that with the consent
of the assured any policy for the benefit of a married woman,
whether on the life of a husband or not, is assign-
able.]**

The legislature substituted for the words "a portion of the insurance money, equivalent to the aggregate excess with interest," the words, "that portion of the insurance money, which is purchased by excess of premium above \$500.""]

§ 23. Contracts in contemplation of marriage.—A contract made between persons in contemplation of marriage, remains in full force after the marriage takes place.

**[R. S., 2601, L. 1848, ch. 200, § 4,
R. S., 2602, L. 1849, ch. 375, § 3,
without change of substance.]**

§ 24. Liability of husband for ante-nuptial debts.—A husband who acquires property of his wife by ante-nuptial contract or otherwise, is liable for her debts contracted before marriage, but only to the extent of the property so acquired.

**[R. S., 2662, L. 1853, ch. 576, § 2,
without change of substance.]**

§ 25. Contract of married woman not to bind husband.—A contract made by a married woman does not bind her husband or his property.

**[R. S., 2604, L. 1860, ch. 90, § 8,
R. S., 2604, L. 1862, ch. 172, § 4,
without change of substance.]**

§ 26. Husband and wife may convey to each other or make partition.— Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in the instrument of partition or division such instrument bars the wife's right of dower in such property, and also, if so expressed, the husband's tenancy by courtesy.

[R. S., 2605, L. 1880, ch. 472, § 1,
R. S., 2606, L. 1887, ch. 537, § 1,
without change of substance.]

§ 27. Right of action by or against married woman for torts.— A married woman has a right of action for an injury to her person, property or character or for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts; her husband is not liable for such acts unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be presumed but must be proved. This section does not affect any right, cause of action or defense existing before the eighteenth day of March, 1890.

[R. S., 3412, L. 1890, ch. 51,
without change of substance.]

§ 28. Pardon not to restore marital rights.— A pardon granted to a person sentenced to imprisonment for life within this state, does not restore that person to the rights of a previous marriage or to the guardianship of a child, the issue of such a marriage.

[R. S., 2596, pt. II, ch. 8, tit. I, § 7,
without change of substance.]

§ 29. Compelling transfer of trust property.— A person who holds property as trustee of a married woman, under a deed of conveyance or otherwise, on the written request of such married

woman, accompanied by a certificate of justice of the supreme court, that he has examined the condition and situation of the property, and made inquiry into the capacity of such married woman to manage and control the same, may convey to such married woman all or any portion of such property, or the rents, issues or profits thereof.

[R. S., 2601, L. 1849, ch. 375,
without change of substance.]

ARTICLE IV.

The Custody and Wages of Children.

Section 40. Habeas corpus for child detained by parent.

41. Habeas corpus for child detained by Shakers.

42. Payment of wages to minor; when valid.

Section 40. Habeas corpus for child detained by parent.— A husband or wife, being an inhabitant of this state, living in a state of separation, without being divorced, who has a minor child, may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order.

[R. S., 2607, pt. II, ch. 8, tit. II, §§ 1, 2, 3.

The original law only allowed the wife to apply for the writ.]

§ 41. Habeas corpus for child detained by Shakers.— If it shall appear on such application, or the return of the writ, that the husband or wife of the applicant has become attached to the society of Shakers, and detains a child of the marriage among them, and that such child is secreted or concealed among them, the court may issue a warrant in aid of such writ of habeas corpus, directed to the sheriff of the county where the child is suspected to be, commanding such sheriff, in the day time, to

search the dwelling-houses and other buildings of such society, or of any members thereof, or any other building specified in the warrant, for such child, and to bring him before the court, and the sheriff must forthwith execute such warrant.

[R. S., 2607, pt. II, ch. 8, tit. II, §§ 4, 5, 6,
without change of substance.]

§ 42. Payment of wages to minor; when valid.—Where a minor is in the employment of a person other than his parent or guardian, payment to such minor of his wages is valid, unless such parent or guardian notify the employer in writing, within thirty days after the commencement of such service, that such wages are claimed by such parent or guardian, but whenever such notice is given at any time payments to the minor shall not be valid for services rendered thereafter.

[R. S., 2619, L. 1850, ch. 266, § 1.

The requirement that the notice be in writing is new. The last clause authorizing the parent or guardian to fix a time after which the minor shall not be entitled to wages is new. It seems that a neglect to give the notice under the present law within thirty days after the commencement of the service emancipates the child as to his wages for the entire term of service.]

ARTICLE V.

Guardians.

Section 50. Guardians in socage.

51. Appointment of guardians by parent.

52. Powers and duties of such guardians.

53. Duties and liabilities of all general guardians.

54. Guardianship of married woman.

Section 50. Guardians in socage.—Where a minor for whom a general guardian of the property has not been appointed shall acquire real property, the guardianship of his property with the rights, powers and duties of a guardian in socage belongs:

1. To the father;
2. If there be no father, to the mother;
3. If there be no father or mother, to the nearest and eldest relative of full age, not under any legal incapacity; and as between relatives of the same degree of consanguinity, males shall be preferred.

The rights and authority of every such guardian shall be superseded by a testamentary or other guardian appointed in pursuance of this article.

[R. S., 2418-19, pt. II, ch. 7, tit. I, art. II, §§ 5, 6, 7,
without change of substance.]

§ 51. Appointment of guardians by parent.—A married woman is the joint guardian of her children with her husband, with equal powers, rights and duties in regard to them. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born, or of any living child, under the age of twenty-one years and unmarried, may, by deed or last will, duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons.

A person appointed guardian in pursuance to this section shall not exercise the power or authority thereof unless such will is admitted to probate, or such deed executed and recorded as provided by section twenty-eight hundred and fifty-one of the code of civil procedure.

[R. S., 2612, pt. I, ch. 8, tit. III, § 1,
L. 1871, ch. 32,
L. 1888, ch. 454,
L. 1893, ch. 175,
without change of substance.]

§ 52. Powers and duties of such guardian.—Every such disposition from the time it takes effect, shall vest in the person to whom made, if he accepts the appointment, all the rights

and powers, and subject him to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor, as guardian in socage or otherwise. He may take the custody and charge of the tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor, and shall recover damages in such actions for the benefit of his ward. He shall also take the custody and management of the personal estate of such minor and the profits of his real estate, during the time for which such disposition shall have been made, and may bring such actions in relation thereto as a guardian in socage might by law.

[R. S., 2612-13, pt. II, ch. 8, tit. III, §§ 2, 3,
with the following change: The words "if he accepts the
appointment" are inserted.]

§ 53. Duties and liabilities of all general guardians.—A general guardian or guardian in socage shall safely keep the property of his ward that shall come into his custody, and shall not make or suffer any waste, sale or destruction of such property or inheritance, but shall keep in repair and maintain the houses, gardens and other appurtenances to the lands of his ward, by and with the issues and profits thereof, or with such other moneys belonging to his ward as shall be in his possession; and shall deliver the same to his ward, when he comes to full age, in at least as good condition as such guardian received the same, inevitable decay and injury only excepted; and shall answer to his ward for the issues and profits of the real estate, received by him, by a lawful account.

If any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the custody of the same, and of such ward, and shall forfeit to the ward treble damages.

[R. S., 2613, pt. II, ch. 8, tit. III, §§ 20, 21,
without change of substance.]

§ 54. Guardianship of married woman.—The lawful marriage of a woman before she attains her majority terminates a general guardianship with respect to her person, but not with respect to her property.

[New.]

ARTICLE VI.

The Adoption of Children.

Section 60. Definitions; effect of article.

61. Whose consent necessary.

62. Requisition of voluntary adoption.

63. Order.

64. Effect of adoption.

65. Adoptions from charitable institutions.

66. Abrogation of voluntary adoption.

67. Application in behalf of child for abrogation of an adoption from a charitable institution.

68. Application by a foster parent for the abrogation of such an adoption.

Section 60. Definitions; effect of article.—Adoption is the legal act whereby an adult takes a minor into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect to such minor. Hereafter, in this article, the person adopting is designated the “foster parent.” A voluntary adoption is any other than that of an indigent child, or one who is a public charge from an orphan asylum or charitable institution.

An adult unmarried person, or an adult husband or wife, or an adult husband and his adult wife together, may adopt a minor in pursuance of this article, and a child shall not hereafter be adopted except in pursuance thereof. Proof of the lawful adoption of a minor heretofore made may be received in evidence, and any such adoption shall not be abrogated by the enactment of this chapter and shall have the effect of an adoption hereunder. Nothing in this article in regard to an adopted child

inheriting from the foster parent, applies to any will, devise or trust made or created before June twenty-fifth, eighteen hundred and seventy-three, or alters, changes or interferes with such will, devise or trust, and as to any such will, devise or trust, a child adopted before that date is not an heir so as to alter estates or trusts, or devises in wills so made or created.

[R. S., 2608, 2610, L. 1873, ch. 830, §§ 1, 2, 13,
Id., 2400, L. 1884, ch. 438, § 3,
without change of substance.]

§ 61. Whose consent necessary.— Consent to adoption is necessary as follows:

1. Of the minor, if over twelve years of age;
2. Of the foster parent's, husband or wife, unless lawfully separated, or unless they jointly adopt such minor;
3. Of the parents or surviving parent of a legitimate child, and of the mother of an illegitimate child; but the consent of a parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery or cruelty, or adjudged to be insane, or to be an habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary.
4. Of a person of full age having lawful custody of the child, if any such person can be found, where the child has no father or mother living, or no father or mother whose consent is necessary under the last subdivision. If such child has no father or mother living, and no person can be found who has the lawful custody of the child, the judge or surrogate shall recite such facts in the order allowing the adoption.

[R. S. 2608, L. 1873, ch. 830, §§ 3, 4, 5, 6, 7, 11,
L. 1889, ch. 58,
without change of substance.]

§ 62. Requisites of voluntary adoption.— In adoption the following requirements must be followed:

1. The foster parent or parents, the minor and all the persons whose consent is necessary under the last section, must appear before the county judge or the surrogate of the county where the foster parent or parents reside, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate an instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parent or parents to adopt and treat the minor as his, her, or their own lawful child, and a statement of the age of the child, as nearly as the same can be ascertained; which statement shall be taken *prima facie* as true. The instrument must be signed by the foster parent or parents and by each person whose consent is necessary to the adoption, and severally acknowledged by said persons before such judge or surrogate; but where a parent or person or institution having the legal custody of the minor resides or is located in some other state or county, his or their written acknowledged consent, or the written acknowledged consent of the officers of such institution, certified as conveyances are required to be certified to entitle them to record in a county in this state, is equivalent to his or their appearance and execution of such instrument.

[R. S. 2609, L. 1873, ch. 830, §§ 2, 8, 9,
L. 1888, ch. 485,

without change of substance, except that the surrogate is given the same jurisdiction over adoption proceedings as a county judge.]

§ 63. Order.—If satisfied that the moral and temporal interests of the child will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption, reciting the reasons therefor, and directing that the minor shall thenceforth be regarded and treated in all respects as the child of the foster parent or parents. Such order, and the instrument and consent, if any, mentioned in the last section must be filed and recorded in the office of the county clerk of such county.

[R. S. 2609, L. 1873, ch. 830, § 9,
without change of substance, except that the last sentence
requiring order to be filed is new.]

§ 64. Effect of adoption.— Thereafter the parents of the minor are relieved from all parental duties towards, and of all responsibility for, and have no rights over such child, or to his property by descent or succession. The child takes the name of the foster parent. His rights of inheritance and succession from his natural parents remain unaffected by such adoption.

The foster parent or parents and the minor sustain toward each other the legal relation of parent and child and have all the rights, and are subject to all the duties of that relation, including the right of inheritance from each other, and such right of inheritance extends to the heirs and next of kin of the minor, and such heirs and next of kin shall be the same as if he were the legitimate child of the person adopting; but as respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster parent dying without heirs, the minor is not deemed the child of the foster parent so as to defeat the rights of remaindermen.

[R. S. 2609, L. 1873, ch. 830, §§ 10, 12,
R. S. 2400, L. 1884, ch. 438, §§ 8, 9, 11,

The legislature added the provisions expressly denying to the natural parent the right to take by descent or succession from the adopted child, and giving to the adopted child the right to take by descent or succession from the natural parent. There is a valuable note on the law of adoption in 29 Abb. N. C. 49.]

§ 65. Adoption from charitable institutions.— Where an orphan asylum or charitable institution is authorized to place children for adoption, the adoption of every such child shall, when practicable, be given to persons of the same religious faith as the parents of such child. The adoption shall be effected by the execution of an instrument containing substantially the same

provisions as the instrument provided in this article for voluntary adoption, signed and sealed in the corporate name of such corporation by the officer or officers authorized by the directors thereof to sign the corporate name to such instruments, and signed by the foster parent or parents and each person whose consent is necessary to the adoption; and may be signed by the child, if over twelve years of age, all of whom shall appear before the county judge or surrogate of the county where such foster parents reside and be examined, except that such officers need not appear; and such judge or surrogate may thereupon make the order of adoption provided by this article. Such instrument and order shall be filed and recorded in the office of the county clerk of the county where the foster parent resides and the adoption shall take effect from the time of such filing and recording.

[R. S. 2400, L. 1884, ch. 438, §§ 7, 10,
without change of substance.]

§ 66. Abrogation of voluntary adoption.—A minor may be deprived of the rights of a voluntary adoption by the following proceedings only:

The foster parent, the minor and the persons whose consent would be necessary to an original adoption, must appear before the county judge or surrogate of the county where the foster parent resides, who shall conduct an examination as for an original adoption. If he is satisfied that the abrogation of the adoption is desired by all parties concerned, and will be for the best interests of the minor, the foster parent, the minor, and the persons whose consent would have been necessary to an original adoption shall execute an agreement, whereby the foster parent and the minor agree to relinquish the relation of parent and child and all rights acquired by such adoption, and the parents or guardian of the child or the institution having the custody thereof, agree to re-assume such relation. The judge or surrogate shall indorse, upon such agreement, his consent to the abrogation of the adoption. The agreement and con-

sent shall be filed and recorded in the office of the county clerk of the county where the foster parent resides, and a copy thereof filed and recorded in the office of the county clerk of the county where the parents or guardian reside, or such institution is located, if they reside, or such institution is located, within this state. From the time of the filing and recording thereof, the adoption shall be abrogated, and the child shall re-assume its original name and the parents or guardians of the child shall re-assume such relation. Such child, however, may be adopted directly from such foster parents by another person in the same manner as from parents, and as if such foster parents were the parents of such child.

[R. S., 2610, L. 1873, ch. 830, § 13,

amplified, but not changed in substance, except that surrogate is given same jurisdiction as county judge and an application to a justice of the supreme court provided by § 13 is omitted. The provision requiring copy of agreement to be filed in office of county clerk where parent or guardian resides is also new. The last sentence is new.]

§ 67. Application in behalf of the child for abrogation of an adoption from a charitable institution.—A minor who shall have been adopted in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, or any corporation which shall have been a party to the agreement by which such child was adopted, or any person on the behalf of such child, may make an application to the county judge or the surrogate's court of the county in which the foster parent then resides, for the abrogation of such adoption, on the ground of cruelty, misuse, refusal of necessary provisions or clothing, or inability to support, maintain or educate such child, or of any violation of duty on the part of such foster parent toward such child; which application shall be by a petition setting forth the grounds thereof, and verified by the person or by some officer of the corporation making the same. A citation shall thereon be issued by such judge or surrogate in or out of such court, requir-

ing such foster parent to show cause why the application should not be granted. The provisions of the code of civil procedure relating to the issuing, contents, time and manner of service of citations issued out of a surrogate's court, and to the hearing on the return thereof, and to enforcing the attendance of witnesses, and to all proceedings thereon, and to appeals from decrees of surrogate's courts, not inconsistent with this chapter, shall apply to such citation, and to all proceedings thereon. Such judge or court shall have power to order or compel the production of the person of such minor. If on the proofs made before him, on the hearing on such citation, the judge or surrogate shall determine that either of the grounds for such application exists, and that the interests of such child will be promoted by granting the application, and that such foster parent has justly forfeited his right to the custody and services of such minor, an order shall be made and entered abrogating the adoption, and thereon the status of such child shall be the same as if no proceedings had been had for the adoption thereof.

After one such petition against a foster parent has been denied, a citation on a subsequent petition against the same foster parent may be issued or refused in the discretion of the judge or surrogate to whom such subsequent petition shall be made.

[R. S., 2400, L. 1884, ch. 438, § 12,
without change of substance except that the original act
only conferred jurisdiction on the surrogate's court.]

§ 68. Application of the foster parent for the abrogation of such an adoption.—A foster parent who shall have adopted a minor in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, may apply to the county judge or surrogate's court of the county in which such foster parent resides, for the abrogation of such adoption on the ground of the willful desertion of such child from such foster parent, or of any misdemeanor or ill-behavior of such child, which application shall be by petition, stating the grounds thereof, and the substance of the agreement of adoption,

and shall be verified by the petitioner; and thereon a citation shall be issued by such judge or surrogate in or out of such court, directed to such child, and to the corporation which was a party to such adoption, or, if such corporation does not then exist, to the superintendent of the poor of such county, requiring them to show cause why such petition should not be granted. Unless such corporation shall appear on the return of such citation, before the hearing thereon shall proceed, a special guardian shall be appointed by such judge or court to protect the interests of such child in such proceeding, and the foster parent shall pay to such special guardian such sum as the court shall direct for the purpose of paying the fees and the necessary disbursements in preparing for and contesting such application on behalf of the child. If such judge or surrogate shall determine, on the proofs made before him, on the hearing of such citation, that the child has violated his duty toward such foster parent, and that due regard to the interests of both require that such adoption be abrogated, an order shall be made and entered accordingly; and such judge or court may make any disposition of the child, which any court or officer shall then be authorized to make of vagrant, truant or disorderly children. If such judge or surrogate shall otherwise determine an order shall be made and entered denying the petition.

[R. S., 2401, L. 1884, ch. 438, § 13,

without change of substance, except the county judge is given same jurisdiction as surrogate possesses under the original law.]

ARTICLE VII.

Apprentices and Servants.

Section 70. Definitions; effect of article.

71. Contents of indenture.

72. Indenture by minor.

73. Indenture by poor officers.

74. Indenture by charitable corporation.

Section 75. Penalty for failure of master or employer to perform provisions of indenture.

76. Assignment of indenture on death of master or employer.

77. Contract with apprentice in restraint of trade void.

Section 70. Definitions; effect of article.—The instrument whereby a minor is bound out to serve as a clerk or servant in any trade, profession or employment, or is apprenticed to learn the art or mystery of any trade or craft, is an indenture.

Every indenture made in pursuance of the laws repealed by this chapter shall be valid hereunder, but hereafter a minor shall not be bound out or apprenticed except in pursuance of this article.

[New.]

§ 71. Consents to indenture.—Every indenture must contain:

1. The names of the parties;
2. The age of the minor as nearly as can be ascertained, which age on the filing of the indenture shall be taken prima facie to be the true age;
3. A statement of the nature of the service or employment to which the minor is bound or apprenticed;
4. The term of service or apprenticeship, stating the beginning and end thereof;
5. An agreement that the minor will not leave his master or employer during the term for which he is indentured;
6. An agreement that the master or employer will provide suitable and proper board, lodging and medical attendance for the minor during the continuance of the term; or will pay to such apprentice, or to his parent or guardian for him, an amount sufficient to provide such suitable and proper board, lodging and medical attendance;
7. A statement of every sum of money paid or agreed to be paid in relation to the service;

8. If such minor is bound as an apprentice to learn the art or mystery of any trade or craft, an agreement on the part of the employer to teach, or cause to be carefully and skillfully taught, to such apprentice, every branch of the business to which such apprentice is indentured, and that at the expiration of such apprenticeship he will give to such apprentice a certificate, in writing, that such apprentice has served at such trade or craft a full term of apprenticeship specified in such indenture;

9. If a minor is indentured by the poor officers of a county, city or town, or by the authorities of an orphan asylum, penal or charitable institution, an agreement that the master or employer will cause such child to be instructed in reading, writing and the general rules or arithmetic, and that at the expiration of the term of service he will give to such minor a new bible.

Every such indenture shall be filed in the office of the county clerk of the county where the master or employer resides.

[R. S., 2615, pt. II, ch. 8, tit. IV, art. 1, §§ 8, 9, 10, 11,
Id., 2616; L. 1871, ch. 934, § 2, subds. 2 and 3,
Id., 2399; L. 1884, ch. 438, § 5,
L. 1893, ch. 284.

The terms of the indenture are amplified, but there is no change of substance.]

§ 72. Indenture by minor; by whom signed.— Any minor may, by the execution of the indenture provided by this article, bind himself or herself:

1. As an apprentice to learn the art or mystery of any trade or craft for a term of not less than three nor more than five years; or.

2. As a servant or clerk in any profession, trade or employment for a term of service not longer than the minority of such minor, unless such indenture be made by a minor coming from a foreign country, for the purpose of paying his passage, when such indenture may be made for a term of one year although such term may extend beyond the time when such person will be of full age.

An indenture made in pursuance of this section must be signed,

1. By the minor;

2. By the father of the minor unless he is legally incapable of giving consent or has abandoned his family;

3. By the mother of the minor unless she is legally incapable of giving consent;

4. By the guardian of the person of the minor, if any;

5. If there be neither parents or guardian of the minor legally capable of giving consent, by the county judge of the county or a justice of the supreme court of the district, in which the minor resides; whose consent shall be necessary to the binding out or apprenticing in pursuance of this section of a minor coming from a foreign country or of the child of an Indian woman, in addition to the other consents herein provided;

6. By the master or employer.

[R. S., 2614, pt. II, ch. 8, tit. IV, art. I, §§ 1, 2, 3, 4, 7,

Id., 2616, pt. II, ch. 8, tit. IV, art. I, §§ 12, 13,

Id., 2616, L. 1871, ch., 934, §§ 1 and 2, sub. 1.

The provision requiring consent of county judge or justice of the supreme court is new. Under the revised statutes a woman could only bind herself until she became eighteen.]

§ 73. Indenture by poor officers; by whom signed.—The poor officers of a municipal corporation may, by an execution of the indenture provided by this article bind out or apprentice any minor whose support shall become chargeable to such municipal corporation.

In such case the indenture shall be signed,

1. By the officer or officers binding out or apprenticing the minor;

2. By the master or employer;

3. By the county judge of the county, if the support of such child was chargeable to the county, by two justices of the peace, if chargeable to the town, or by the mayor and aldermen or any two of them, if chargeable to the city.

The poor officers by whom a child is indentured and their successors in office, shall be guardians of every such child and shall inquire into the treatment thereof, and redress any grievance as provided by law.

【R. S., 2615, pt. II, ch. 8, tit. IV, art. I, §§ 5, 6,

Id., 2618, pt. II, ch. 8, tit. IV, art. III, § 27,

The provisions requiring consent of county judge is new.】

§ 74. Indenture by a charitable corporation; by whom signed.—

Where an orphan asylum or charitable institution is authorized to bind out or apprentice dependent or indigent children committed to its charge, every such child shall, when practicable, be bound out or apprenticed to persons of the same religious faith as the parents of such child, and the indenture shall in such case be signed,

1. In the corporate name of such institution by the officer or officers thereof authorized by the directors to sign the corporate name to such instrument, and shall be sealed with the corporate seal;

2. By the master or employer; and

3. May be signed by the child, if over twelve years of age.

【R. S., 2399, L. 1884, ch. 438, §§ 5, 10,

without change of substance.】

§ 75. Penalty for failure of master or employer to perform provisions of indenture.—If a master or employer to whom a minor has been indentured shall fail, during the term of service, to perform any provision of such indenture, on his part, such minor or any person in his behalf may bring an action against the master or employer to recover damages for such failure; and if satisfied that there is sufficient cause, the court shall direct such indenture to be canceled, and may render judgment against such master or employer for not to exceed one thousand nor less than one hundred dollars, to be collected and paid over for the use and benefit of such minor to the corporation or officers indenturing such minor, if so indentured, and otherwise, to the parents or guardian of the child.

【R. S., 2617, L. 1871, ch. 934, § 5,

Id., 2399, L. 1884, ch. 438, § 6.

without change of substance.】

§ 76. Assignment of indenture on death of master or employer.—On the death of a master or employer to whom a person is indentured by the poor officers of a municipal corporation, the personal representatives of the master or employer may, with the written and acknowledged consent of such person, assign such indenture and the assignee shall become vested with all the rights and subject to all the liabilities of his assignor; or if such consent be refused, the assignment may be made with like effect by the county judge of the county, on proof that fourteen days' notice of the application therefor has been given to the person indentured, to the officers by whom indentured, and to his parent or guardian, if in the country.

[R. S., 2400, L. 1884, ch. 438, § 12,
without change of substance except that the original act
only conferred jurisdiction on the surrogate's court.]

§ 77. Contracts with apprentices in restraint of trade void.—No person shall accept from any apprentice any agreement or cause him to be bound by oath, that after his term of service expires, he will not exercise his trade, profession or employment in any particular place; nor shall any person exact from any apprentice, after his term of service expires, any money or other thing, for exercising his trade, profession or employment in any place. Any security given in violation of this section shall be void; and any money paid, or valuable thing delivered, for the consideration, in whole or in part, of any such agreement or exaction, may be recovered back by the person paying the same with interest; and every person accepting such agreement, causing such obligation to be entered into, or exacting money or other thing, is also liable to the apprentice in the penalty of one hundred dollars, which may be recovered in a civil suit.

[R. S., 2618, pt. II, ch. 8, tit. IV, art. 3, §§ 39, 40,
without change of substance.]

ARTICLE VIII.

Section 90. Laws repealed.

91. When to take effect.

Section 90. Laws repealed.—Of the laws enumerated in the annexed schedule, that portion specified in the last column is hereby repealed.

§ 91. When to take effect.—This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

Code of Criminal Procedure, §§ 939 and 940.

Revised Statutes, pt. 2, ch. 1, tit. I, art. 1, §§ 5, 6, 7.

Revised Statutes, pt. II, ch. 8..... All, except § 49 of tit. I.

| Laws of— | Chapter. | Sections. |
|-----------|----------|---|
| 1830..... | 320..... | 25 to 29, inclusive. |
| 1840..... | 80..... | All. |
| 1845..... | 11..... | All. |
| 1848..... | 200..... | All. |
| 1849..... | 375..... | All. |
| 1850..... | 266..... | All. |
| 1851..... | 321..... | All. |
| 1853..... | 576..... | All. |
| 1858..... | 187..... | All. |
| 1860..... | 90..... | All. |
| 1862..... | 172..... | All. |
| 1866..... | 656..... | All. |
| 1870..... | 277..... | All. |
| 1871..... | 32..... | All. |
| 1871..... | 934..... | All, except last sentence of § 3, as am. by L. 1888, ch. 437. |
| 1873..... | 25..... | All. |
| 1873..... | 821..... | All. |
| 1873..... | 830..... | All. |

| Laws of— | Chapter. | Sections. |
|-----------|----------|---|
| 1877..... | 430..... | All. |
| 1878..... | 300..... | All. |
| 1879..... | 248..... | All. |
| 1880..... | 472..... | All. |
| 1884..... | 381..... | All. |
| 1884..... | 438..... | All, except 1, 2, 3, 4, 5, down to and including the word “servant” first occurring, and 7 down to and in- cluding the word “adoption” first occurring. |
| 1887..... | 24..... | All. |
| 1887..... | 77..... | All. |
| 1887..... | 537..... | All. |
| 1887..... | 703..... | All. |
| 1888..... | 78..... | All. |
| 1888..... | 437..... | All, except last sentence. |
| 1888..... | 454..... | All. |
| 1888..... | 485..... | All. |
| 1889..... | 58..... | All. |
| 1889..... | 415..... | All. |
| 1890..... | 51..... | All. |
| 1892..... | 594..... | All. |
| 1893..... | 175..... | All. |
| 1893..... | 242..... | All. |
| 1893..... | 284..... | All. |
| 1893..... | 601..... | All. |
| 1895..... | 531..... | All. |

TABLE SHOWING DISPOSITION OF LAWS REPEALED.

| Laws repealed. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|--------------------------|------------------------|--|
| R. S., pt. II, ch. 1, tit. I, §§ 5-7.. | 2418 | 50... | |
| R. S., pt. II, ch. 8, tit. I, § 1.... | 2595 | 10... | |
| R. S., pt. II, ch. 8, tit. I, § 2.... | 2596 | 4.... | |
| R. S., pt. II, ch. 8, tit. I, § 3, as am. by L. 1893, ch. 601..... | 2596 | 2.,... | |
| R. S., pt. II, ch. 8, tit. I, § 4.... | 2596 | 4.... | |
| R. S., pt. II, ch. 8, tit. I, § 5.... | 2596 | 3.... | |
| R. S., pt. II, ch. 8, tit. I, § 6.... | 2596 | 3, 4.. | |
| R. S., pt. II, ch. 8, tit. I, § 7.... | 2596 | 28... | |
| R. S., pt. II, ch. 1, tit. I, § 8, as am. by L. 1893, ch. 242..... | 2596 | 11... | |
| R. S., pt. II, ch. 8, tit. I, § 9.... | 2597 | 12... | |
| R. S., pt. II, ch. 8, tit. I, §§ 10-11 | 2597 | 13... | Penal Code, § 96, as to perjury. |
| R. S., pt. II, ch. 8, tit. I, § 12... | 2597 | ..... | Penal Code, § 376. |
| R. S., pt. II, ch. 8, tit. I, § 13... | 2597 | 14... | |
| R. S., pt. II, ch. 8, tit. I, §§ 14-16 | 2598 | 15... | |
| R. S., pt. II, ch. 8, tit. I, § 17... | 2598 | 16... | |
| R. S., pt. II, ch. 8, tit. I, § 18... | 2598 | 17... | |
| R. S., pt. II, ch. 8, tit. I, § 19... | 2598 | 10... | |
| R. S., pt. II, ch. 8, tit. II, §§ 1-3. | 2607 | 40... | |
| R. S., pt. II, ch. 8, tit. II, §§ 4-6. | 2607 | 41... | |
| R. S., pt. II, ch. 8, tit. II, § 7... | 2608 | ..... | Sufficiently cov- ered by Penal Code, § 211. |
| R. S., pt. II, ch. 8, tit. III, § 1, as am. by L. 1893, ch. 175..... | 2612 | 51... | |
| R. S., pt. II, ch. 8, tit. III, §§ 2-3 | 2612 | 52... | |
| R. S., pt. II, ch. 8, tit. III, §§ 4-19 | .... | ..... | Heretofore re- pealed. |
| R. S., pt. II, ch. 8, tit. III, §§ 20-21 | 2613 | 53... | |
| R. S., pt. II, ch. 8, tit. IV, §§ 1-4 | 2614 | 72... | |
| R. S., pt. II, ch. 8, tit. IV, §§ 5-6 | 2615 | 73... | |
| R. S., pt. II, ch. 8, tit. IV, § 7... | 2615 | 72... | |

| Laws repealed. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|--------------------------|------------------------|--|
| R. S., pt. II, ch. 8, tit. IV, §§ 8-11 | .... | ..... |  |
| R. S., pt. II, ch. 8, tit. IV, §§ 12-13 | 2616 | 72... | |
| R. S., pt. II, ch. 8, tit. IV, § 14.. | 2618 | ..... | Omitted. |
| R. S., pt. II, ch. 8, tit. IV, §§ 15-25 | .... | ..... | Heretofore re- pealed. |
| R. S., pt. II, ch. 8, tit. IV, § 26.. | 2618 | 70... | |
| R. S., pt. II, ch. 8, tit. IV, § 27.. | 2618 | 73... | |
| R. S., pt. II, ch. 8, tit. IV, §§ 28-38 | .... | ..... | Heretofore re- pealed. |
| R. S., pt. II, ch. 8, tit. IV, §§ 39-40 | 2618 | 77... | |
| R. S., pt. II, ch. 8, tit. IV, §§ 41-42 | .... | ..... | Heretofore re- pealed. |
| R. S., pt. II, ch. 8, tit. IV, § 43.. | 2618 | 70... | |
| L. 1830, ch. 320, §§ 25-29..... | 2597 | ..... | Amend R. S., pt. II, ch. 8, tit. I, §§ 10, 11, 13, 16, 19. |
| L. 1840, ch. 80..... | 2600 | 21, 22 | |
| L. 1845, ch. 11..... | 2600 | 21... | |
| L. 1848, ch. 200, §§ 1-2..... | 2601 | 20... | |
| L. 1848, ch. 200, § 3..... | 2601 | 21... | |
| L. 1848, ch. 200, § 4..... | 2601 | 23... | |
| L. 1849, ch. 375, § 1..... | 2601 | 20... | Amends L. 1848, ch. 200, § 3. |
| L. 1849, ch. 375, § 2..... | 2601 | 29... | |
| L. 1850, ch. 266..... | 2619 | 42... | |
| L. 1851, ch 321..... | 2602 | 21... | |
| L. 1853, ch. 576, § 1..... | 2602 | ..... | Omitted as incon- sistent with subse- quent legislation. |
| L. 1853, ch. 576, § 2..... | 2602 | 24... | |
| L. 1858, ch. 187, § 1..... | 2602 | 21, 22 | |
| L. 1858, ch. 187, § 2..... | 2603 | 22... | |
| L. 1860, ch. 90, § 1..... | 2603 | 20, 21 | |
| L. 1860, ch. 90, §§ 2-3..... | 2603 | 21... | |

| Laws repealed. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|--------------------------|------------------------|---|
| L. 1860, ch. 90, §§ 4-7..... | .... | ..... | Heretofore repealed. |
| L. 1860, ch. 90, § 8..... | 2604 | 25... | |
| L. 1862, ch. 172, §§ 1-5..... | .... | ..... | Heretofore repealed. |
| L. 1862, ch. 172, § 6..... | 2604 | 51, 72 | |
| L. 1862, ch. 172, § 7..... | .... | ..... | Heretofore repealed. |
| L. 1866, ch. 656..... | 2603 | 22... | Amends L. 1858, ch. 187, § 2. |
| L. 1870, ch. 277, § 1..... | 2603 | 21, 22 | Amends L. 1858, ch. 187, § 1. |
| L. 1870, ch. 277, § 2..... | 2604 | 22... | |
| L. 1871, ch. 32..... | 2612 | 51... | Amends R. S., pt. II, ch. 8, tit. III, § 1. |
| L. 1871, ch. 934, § 1..... | 2616 | 72... | |
| L. 1871, ch. 934, § 2, as am. by L. 1893, ch. 284..... | 2616 | 71, 72 | |
| L. 1871, ch. 934, § 3..... | 2617 | ..... | See Penal Code, § 2926. The last sentence is not re- pealed. |
| L. 1871, ch. 934, § 4..... | 2617 | ..... | Sufficiently cov- ered by Code Crim. Pro., §§ 927ff. |
| L. 1871, ch. 934, § 5..... | 2617 | 75... | |
| L. 1871, ch. 934, § 6..... | 2617 | 70... | |
| L. 1873, ch. 25..... | 2597 | 11... | Amends R. S., pt. II, ch. 8, tit. I, §§ 11, 13. |
| L. 1873, ch. 821..... | 2605 | 22... | Amends L. 1870, ch. 277, § 2. |
| L. 1873, ch. 830, § 1..... | 2608 | 60... | |
| L. 1873, ch. 830, § 2..... | 2608 | 61, 62 | |

| Laws repealed. | R. S. 8th ed., pages. | Secs. of Revisions. | Notes. |
|---|--------------------------|------------------------|--|
| L. 1873, ch. 830, §§ 3, 7..... | 2608 | 61... | |
| L. 1873, ch. 830, § 8..... | 2609 | 62... | |
| L. 1873, ch. 830, § 9..... | 2609 | 63... | |
| L. 1873, ch. 830, § 10..... | 2609 | 64... | |
| L. 1873, ch. 830, § 11, as am. by L. 1889, ch. 59..... | 2609 | 61... | |
| L. 1873, ch. 830, § 12..... | 2609 | 64... | |
| L. 1873, ch. 830, § 13..... | 2610 | 60, 66 | |
| L. 1877, ch. 430..... | 2597 | 51... | Amends R. S., pt. II, ch. 8, tit. I, § 8. |
| L. 1878, ch. 300..... | 2605 | 21... | |
| L. 1879, ch. 248..... | 2605 | 22... | |
| L. 1880, ch. 472..... | 2605 | 26... | |
| L. 1880, ch. 381, as am. by L. 1892, ch. 594..... | 2606 | 21... | |
| L. 1884, ch. 438, §§ 1-4..... | 2398 | ..... | Not repealed. |
| L. 1884, ch. 438, § 5..... | 2399 | 71, 74 | |
| L. 1884, ch. 438, § 6..... | 2399 | 75... | |
| L. 1884, ch. 438, § 7..... | 2400 | 65... | |
| L. 1884, ch. 438, § 8..... | 2400 | 60, 64 | |
| L. 1884, ch. 438, § 9..... | 2400 | 64... | |
| L. 1884, ch. 438, § 10..... | 2400 | 65... | |
| L. 1884, ch. 438, § 11..... | 2400 | 64... | |
| L. 1884, ch. 438, § 12..... | 2400 | 67... | |
| L. 1884, ch. 438, § 13..... | 2401 | 68... | |
| L. 1887, ch. 24..... | 2596 | 4.... | Amends R. S., pt. II, ch. 8, tit. I, § 2. |
| L. 1887, ch. 77..... | 2597 | 11... | Amends R. S., pt. II, ch. 8, tit. I, § 8. |
| L. 1887, ch. 537..... | 2606 | 26... | |
| L. 1887, ch. 703..... | 2609 | 64... | Amends L. 1873, ch. 830, § 10. |
| L. 1888, ch. 78..... | 2597 | 11... | Amends R. S., pt. II, ch. 8, tit. I, § 8. |
| L. 1888, ch. 437..... | 2617 | ..... | Penal Code, § 2926. |

| Laws repealed. | R. L. 8th ed., pages. | Secs. of Revisions. | Notes. |
|-----------------------|--------------------------|------------------------|---|
| L. 1888, ch. 454..... | 2612 | 51... | Amends R. S., pt. II, ch. 8, tit. III, § 1. |
| L. 1888, ch. 485..... | 2609 | 62... | Amends L. 1873, ch. 830, § 8. |
| L. 1889, ch. 58..... | 3320 | 61, 62 | Amends L. 1873, ch. 830, § 11. |
| L. 1889, ch. 415..... | 3319 | 11... | Amends pt. II, ch. 8, tit. I, § 8. |
| L. 1890, ch. 51..... | 3412 | 27... | |
| L. 1892, ch. 594..... | 3319 | 21... | Amends L. 1884, ch. 381, § 1. |
| L. 1893, ch. 175..... | .... | 51... | Amends R. S., pt. II, ch. 8, tit. III, § 1. |
| L. 1893, ch. 242..... | .... | 11... | Amends R. S., pt. II, ch. 8, tit. I, § 8. |
| L. 1893, ch. 284..... | .... | 71, 72 | Amends L. 1871, ch. 934, § 2. |
| L. 1893, ch. 601..... | .... | 2.... | Amends R. S., pt. II, ch. 8, tit. I, § 3 |
| L. 1895, ch. 531..... | .... | 18... | |

GENERAL REPEALING ACT.

GENERAL REPEALING ACT.

[This bill became ch. 548 of the Laws of 1896.]

REVISERS' NOTE TO GENERAL REPEALING ACT.

The object of this bill is to repeal certain statutes and parts of statutes which are supposed to have become obsolete, or which have been superceded by subsequent legislation, or the substance of which has been merged in other statutes. The legislature frequently enacts laws embodying in whole or in part, the provisions of earlier statutes without repealing them. The result is confusion as to the matter contained in the various statutes, as well sometimes as apparent conflict in their provisions. Again many statutes, especially in the earlier history of the state, were of a temporary character, and soon worked out the purpose for which they were enacted. Others became obsolete for various reasons, either by expiration of time or a change in the territorial or governmental conditions which affected them at the time of their passage. The process of statutory evolution is constantly going on, and an occasional general repealing act is necessary to take out of our statutes, and remove from our statute books, a large amount of dead matter.

In preparing the general revision bills, the commission has repealed a large number of statutes affecting the subjects involved in the revision, which are set forth in schedules at the end of the laws. This bill embraces numerous statutes which can not be properly the subject of revision, but which we think should be repealed, so that in future publications of the general laws it will not be deemed necessary to continue to print statutes which are evidently of no further force. The body of our statute law

is so large that only living laws should be embraced in current publications of statutes. Neither the bench nor the bar nor other persons who have occasion to consult statutes should be obliged to examine laws which possess no vitality, and which have only an antiquarian value. The list of statutes repealed has been examined by the commission with great care, and only those have been included in the bill which we think are clearly obsolete, or which have been superseded by other statutes or merged in them. In each case, we have endeavored to give the existing statute the benefit of any doubt, and permit it to stand if by any reasonable construction it can still be deemed to have any vitality.

CHARLES Z. LINCOLN,
WILLIAM A. JOHNSON,
A. JUDD NORTHRUP.

Commissioners.

Dated, *March 3, 1896.*

GENERAL REPEALING ACT.

AN ACT to repeal certain acts and parts of acts.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Laws repealed.—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

§ 2. Saving clause.—The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done or right accruing, accrued or acquired, or penalty, forfeiture or punishment incurred prior to the time when this act takes effect under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such laws had not been repealed; and all actions or proceedings, civil or criminal, commenced under or by virtue of the laws so repealed and pending on the first day of June, eighteen hundred and ninety-six, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing unless it shall be otherwise specially provided by law.

§ 3. This act shall take effect on the first day of June, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

| Revised Statutes. | Sections. | Subject matter. |
|-----------------------------------|-------------------|---|
| Pt. I, ch. 2, tit. 2 | All . . . | Senate districts. |
| Pt. I, ch. 2, tit. 6 | All . . . | Alteration of counties, cities, villages and towns. |
| Pt. I, ch. 9, tit. 5 | 15 | Penalty for false return of surveyor. |
| Pt. I, ch. 9, tit. 5 | 54 | Penalty for squatting on public lands. |
| Pt. I, ch. 9, tit. 7 | 1, 4-9.. | Public buildings and erections. |
| Pt. I, ch. 9, tit. 8 | 1-5, 9.. | State Library. |
| Pt. I, ch. 15, tit. 3 | All . . . | Instruction for deaf and dumb. |
| Pt. I, ch. 20, tit. 8 | 61-63.. | Profane cursing and swearing. |
| | 65-68.. | Disturbance of religious meetings. |
| | 73-77.. | General provisions. |
| Pt. I, ch. 20, tit. 15 | 13, 14. | Marking of logs and timber. |
| Pt. III, ch. 1, tit. 15 | 21-24, 25. | Courts of Common Pleas and General Sessions. |
| Pt. III, ch. 2, tit. 4 | 231 . . . | Special courts. |
| Pt. III, ch. 10, tit. 3 | 1, 41, 42, 51. | Fees of certain officers. |
| Pt. III, ch. 10, tit. 4 | 1, 2 . . . | Fees of officers in certain cases. |
| Pt. IV, ch. 1, tit. 6 | 31, 41. | Offenses punishable by imprisonment. |
| Pt. IV, ch. 1, tit. 7 | 18 | Crimes and their punishment. |

| Laws of. | Sections. | Subject matter. |
|-------------------------|--------------------|---|
| 1828, ch. 137 | All | Superior Court in the City of New York. |
| 1830, ch. 259 | All | Printing of the Revised Statutes. |
| 1831, ch. 203 | 4 | Restricting taking oysters in Hudson river. |
| 1832, ch. 246 | All | Costs of suits brought in name of State. |
| 1833, ch. 56 | 1-3, 5-7 | Comptroller's office. |
| 1834, ch. 78 | All | Disturbance of religious meeting. |

| Laws of. | Sections. | Subject matter. |
|-------------------|------------------------|---|
| 1835, ch. 45..... | All..... | Relating to the practice of physio and surgery. |
| 1835, ch. 123.... | 1..... | Academies, powers of trustees. |
| 1835, ch. 272.... | 1..... | Liquors not to be sold to paupers. |
| 1835, ch. 299.... | All..... | Superintendents of the poor. |
| 1836, ch. 384.... | All..... | Black Rock harbor. |
| 1836, ch. 532.... | 3..... | Geneva College. |
| 1839, ch. 375.... | All..... | Fees of district attorneys. |
| 1840, ch. 21..... | All..... | Election of mayors by the people. |
| 1841, ch. 221.... | All..... | Albany Medical College. |
| 1841, ch. 223.... | All..... | Geneva Medical College. |
| 1843, ch. 57..... | 3..... | Certain officers not to be inter- ested in contracts. |
| 1843, ch. 205.... | All..... | Surrogates to procure their bill of fees taxed. |
| 1844, ch. 255.... | 2, 4, 8.... | State Library. |
| 1845, ch. 85..... | 2, 4, 5, 6, 7. | State Library. |
| 1845, ch. 180.... | 22, 28.... | Board of supervisors; accounts to be numbered. |
| 1847, ch. 69..... | All..... | Pilots on East river. |
| 1847, ch. 170.... | All..... | Acknowledgment of deeds before certain officers of the Army of the United States. |
| 1847, ch. 276.... | 1-7..... | Election of certain judicial off- cers. |
| 1847, ch. 455.... | 17, 19, 25, 26..... | Allowance to certain officers. |
| 1847, ch. 470.... | All..... | Judiciary. |
| 1848, ch. 58..... | All..... | Seal of Broome county. |
| 1848, ch. 72..... | 1-2..... | State Engineer; office; powers and duties. |
| 1848, ch. 188.... | All..... | Privileges of firemen. |
| 1848, ch. 321.... | All..... | Navigation of East river. |
| 1849, ch. 124.... | All..... | Superior Court judges; increase of. |
| 1849, ch. 125.... | 20, 21.... | Courts in city of Brooklyn. |

| Laws of | Sections. | Subject matter. |
|-------------------|-----------|---|
| 1850, ch. 155.... | All..... | Law library for Attorney-General's office. |
| 1851, ch. 52.... | All..... | Relief of sick and disabled seamen. |
| 1851, ch. 163.... | All..... | Powers of late Court of Chancery. |
| 1851, ch. 217.... | All..... | Election of recorders in cities. |
| 1851, ch. 232.... | All..... | Chautauqua county; seal of. |
| 1851, ch. 488.... | All..... | Powers and duties of State officers, etc. |
| 1852, ch. 46.... | All..... | Exemption of United States mint in New York city from taxation. |
| 1852, ch. 282.... | All..... | Exemption of buildings for public worship, school houses, etc., in New York city from taxation. |
| 1853, ch. 142.... | 1, 2..... | Fees for searches in New York city. |
| 1853, ch. 218.... | All..... | Protection of emigrant passengers arriving at the city of New York. |
| 1853, ch. 338.... | 4..... | Brooklyn City Court; jurisdiction of. |
| 1853, ch. 406.... | All..... | Exemption of United States assay office from taxation. |
| 1853, ch. 467.... | All..... | Licensing pilots. |
| 1853, ch. 498.... | All..... | Jurors in the city of New York. |
| 1853, ch. 619.... | All..... | Emigrants, protection of, arriving at city of New York. |
| 1854, ch. 188.... | All..... | County superintendents of the poor. |
| 1854, ch. 198.... | All..... | Court of Common Pleas for city of New York. |
| 1855, ch. 64.... | All..... | Census of the inhabitants of State. |
| 1855, ch. 269.... | All..... | Bonds of overseer of the poor. |

| Laws of. | Sections. | Subject matter. |
|-------------------|-----------|--|
| 1855, ch. 471.... | 4..... | When copies of records may be read in evidence. |
| 1855, ch. 556.... | All..... | Steamboat excursions. |
| 1857, ch. 243.... | All..... | Pilots. |
| 1857, ch. 267.... | All..... | Abandoned canals. |
| 1857, ch. 367.... | All..... | Wharves and slips in New York city. |
| 1857, ch. 482.... | All..... | Turnpikes; plankroads. |
| 1857, ch. 564.... | All..... | Fees of county judges abolished. |
| 1857, ch. 615.... | All..... | Towns raising money for support of roads and bridges. |
| 1858, ch. 261.... | All..... | Wharves in the city of New York. |
| 1858, ch. 282.... | 6, 8..... | Clerk for Court of Special Sessions in New York city. |
| 1859, ch. 170.... | All..... | Notaries' fees in certain cases. |
| 1860, ch. 57.... | All..... | Powers of Court of Special Sessions in Monroe county. |
| 1860, ch. 254.... | All..... | Rates of wharfage in New York city and Brooklyn. |
| 1860, ch. 305.... | All..... | Compensation of highway commissioners and other town officers. |
| 1860, ch. 522.... | 1, 2..... | Encroachments in New York harbor. |
| 1861, ch. 307.... | All..... | Powers of inspectors of election. |
| 1863, ch. 412.... | All..... | Pilotage in the harbor of New York. |
| 1863, ch. 456.... | All..... | Record of internal revenue stamps. |
| 1864, ch. 387.... | All..... | Commissioner of emigration. |
| 1864, ch. 391.... | All..... | Penalty for defrauding enlisted persons of bounty money. |
| 1864, ch. 583.... | All..... | School taxes. |

| Laws of. | Sections. | Subject matter. |
|-------------------|-------------|---|
| 1865, ch. 137.... | All..... | Pilotage in harbor of New York. |
| 1865, ch. 170.... | 6..... | Phonographic reporter of City Court of Brooklyn; salary of. |
| 1865, ch. 296.... | All..... | Court criers. |
| 1865, ch. 712.... | All..... | Actions by the board of commissioners of pilots. |
| 1866, ch. 95.... | All..... | Preservation of depositions and affidavits. |
| 1866, ch. 369.... | All..... | Seamen's fund and retreat in the city of New York. |
| 1866, ch. 737.... | All..... | Protection of indigent passengers arriving at city of New York. |
| 1866, ch. 783.... | All..... | Primary meetings and caucuses. |
| 1867, ch. 515.... | All..... | Obtaining land by railroad corporations. |
| 1867, ch. 557.... | All..... | Acknowledgments taken out of the State. |
| 1867, ch. 971.... | All..... | Co-operative companies' act. |
| 1868, ch. 793.... | All..... | Emigrants. |
| 1868, ch. 857.... | All..... | Protection of emigrants arriving at port of New York. |
| 1869, ch. 322.... | All..... | Shade trees. |
| 1869, ch. 361.... | All..... | Abandoned canals. |
| 1870, ch. 47.... | All..... | Jurisdiction of Court of Special Sessions in Monroe county. |
| 1870, ch. 69.... | All..... | Powers of supervisors. |
| 1870, ch. 86.... | 1-7, 9 | Election of judges. |
| 1870, ch. 203.... | 9..... | Powers and duties of clerk of Court of Appeals. |
| 1870, ch. 242.... | All..... | Amendatory of 1857, 615. |
| 1870, ch. 408.... | 15..... | Provisions as to actions deferred and undetermined. |
| 1870, ch. 470.... | 1, 18..... | Increase of number of judges in Brooklyn city court. |

| Laws of. | Sections. | Subject matter. |
|-------------------|------------|--|
| 1870, ch. 539.... | 26-28..... | Jurors in city and county of New York. |
| 1870, ch. 548.... | All..... | Pilotage in harbor of New York. |
| 1871, ch. 576.... | All..... | Use of United States deposit fund for academies. |
| 1871, ch. 610.... | All..... | Legalizing executions issued by county clerks. |
| 1872, ch. 48.... | All..... | Superintendents of the poor. |
| 1872, ch. 143.... | All..... | Excise moneys; power over by town boards. |
| 1872, ch. 320.... | All..... | Rates of wharfage in New York and Brooklyn. |
| 1872, ch. 685.... | All..... | Supplemental to 1860, ch. 67. |
| 1873, ch. 19.... | 4..... | To punish careless use of fire-arms. |
| 1873, ch. 186.... | 3..... | Protection of citizens in their civil and public rights. |
| 1873, ch. 474.... | All..... | County clerks to transmit copy of canvass to Secretary of State. |
| 1874, ch. 656.... | All..... | Publication of judicial proceedings, etc., in New York city. |
| 1875, ch. 249.... | All..... | Use of wharves and piers in New York city. |
| 1875, ch. 378.... | All.... | Protection of life, and to prevent accidents to vessels navigating the harbor of New York. |
| 1876, ch. 295.... | All..... | Granting of new trials, etc. |
| 1877, ch. 319.... | All..... | Evidence. |
| 1877, ch. 419.... | All..... | Licenses to tavern keepers. |
| 1878, ch. 85.... | All..... | Amendatory of 1867, 971. |
| 1878, ch. 377.... | All..... | Application of moneys raised and collected in the towns of this State for highway and bridge purposes. |

| Laws of. | Sections. | Subject matter. |
|-------------------|------------|--|
| 1878, ch. 378.... | All..... | Protection of life, and to prevent accidents to vessels navigating the harbor of New York. |
| 1879, ch. 31.... | All..... | Manner of working and repairing highways. |
| 1879, ch. 208.... | All..... | Organization of Senate districts. |
| 1879, ch. 323.... | All..... | Gas pipes and telegraph lines. |
| 1880, ch. 135.... | All..... | Sanitary code in the city of New York. |
| 1880, ch. 298.... | All..... | Protection of citizens holding claims against other States. |
| 1880, ch. 480.... | All..... | County courts; jurisdiction of. |
| 1880, ch. 487.... | All..... | Dower interest of lunatic widow in real estate, etc. |
| 1880, ch. 552.... | All..... | Certain New York bonds exempt from taxation. |
| 1881, ch. 1.... | All..... | United States deposit fund. |
| 1881, ch. 10.... | All..... | Designation by Governor of city court judges to hold special and circuit terms of Supreme Court in Brooklyn. |
| 1881, ch. 49.... | All..... | Transfer of insane. |
| 1881, ch. 354.... | 1..... | Surrogate of Clinton county. |
| 1881, ch. 400.... | 1..... | Discrimination against persons on account of race, color or creed. |
| 1881, ch. 432.... | All..... | Inspection laws. |
| 1881, ch. 493.... | All..... | Hell gate pilots. |
| 1881, ch. 599.... | All..... | Joint stock company. |
| 1881, ch. 659.... | All..... | Officers of courts of record in Kings county. |
| 1882, ch. 108.... | All..... | Increase of capital of common school fund. |
| 1882, ch. 190.... | All..... | State arms; seal and flag. |
| 1882, ch. 409.... | 68, 69.... | Banks. |

| Laws of. | Sections. | Subject matter. |
|-------------------------|---------------|---|
| 1883, ch. 69 | All | Abolishing office of Auditor of Canals. |
| 1883, ch. 309 | 1-3 | Surrogate for Steuben county. |
| 1883, ch. 329 | All | Organization of Supreme Court. |
| 1883, ch. 424 | All | Congressional districts. |
| 1884, ch. 133 | All | State paper. |
| 1884, ch. 344 | All | Opening of highways in certain counties. |
| 1884, ch. 350 | All | Accounts of Surrogate's Court. |
| 1885, ch. 118 | All | Camps for National Guard. |
| 1885, ch. 262 | All | State paper. |
| 1885, ch. 399 | 3-6 | Susquehanna river; prevention of pollution of. |
| 1885, ch. 427 | All | Protection of butter and cheese manufactories. |
| 1886, ch. 646 | All | Erie and Oswego canals; increase of lockage capacity. |
| 1887, ch. 113 | All | Erie and Oswego canals; increase of lockage capacity. |
| 1887, ch. 463 | All | Erie canal lockage capacity; increase of. |
| 1887, ch. 546 | 34 | Trust companies, change of name of. |
| 1887, ch. 675 | All | Schoolhouses plans, etc., for. |
| 1887, ch. 679 | All | Liquors, sale of regulated. |
| 1888, ch. 173 | All | Improvement of Hudson river. |
| 1888, ch. 229 | All | Washington's birthday. |
| 1888, ch. 416 | All | Improvement of canals. |
| 1889, ch. 110 | All | Amendatory of 1888, 416. |
| 1889, ch. 136 | All | Cancellation of accounts in comptroller's office. |
| 1889, ch. 404 | All | Table of expiration of sentences. |
| 1890, ch. 125 | All | Distribution of moneys to agricultural societies. |
| 1890, ch. 281 | All | Amendatory of revised statutes. |

| Laws of. | Sections. | Subject matter. |
|-------------------|-------------|---|
| 1891, ch. 38..... | All..... | Corporations; change of name of. |
| 1891, ch. 87..... | All..... | Messenger for 2d div. of Court of Appeals. |
| 1891, ch. 119.... | All..... | Insurance companies not to discriminate against persons of color. |
| 1891, ch. 206.... | 1..... | Capitol, completion of. |
| 1891, ch. 223.... | All..... | Attorney for Seneca Indians. |
| 1891, ch. 354.... | 3, 4, 5.... | Distribution of money to certain agricultural societies. |
| 1891, ch. 372.... | All..... | Publication of session laws. |
| 1892, ch. 214.... | All..... | School commissioners who may vote for. |
| 1892, ch. 215.... | All..... | Constitutional amendment, submission of. |
| 1892, ch. 236.... | All..... | World's Columbian Exposition. |
| 1892, ch. 332.... | All..... | Public holiday, October 12, 1892. |
| 1892, ch. 398.... | All..... | Constitutional convention. |
| 1892, ch. 425.... | All..... | State Engineer and Surveyor, to file certain papers with Railroad Commission. |
| 1892, ch. 629.... | All..... | Publication of session laws of 1892. |
| 1892, ch. 709.... | All..... | Sale of lands in forest preserve. |
| 1893, ch. 250.... | All..... | Pharmacy. |
| 1893, ch. 455.... | All..... | Horse racing. |
| 1895, ch. 774.... | All..... | Excise commissioners not to engage in the sale of certain articles. |

TABLE SHOWING REASON FOR THE REPEAL OF THE
FOLLOWING LAWS:

| Revised Statutes. | Sections. | R. S. 8th ed., pages. | Why repealed. |
|--------------------------------|-----------------------------|--------------------------|---|
| Pt. I, ch. 2, tit. 2. | All. . . | 272. . . | Obsolete. |
| Pt. I, ch. 2, tit. 6. | All. . . | 287. . . | Obsolete. See County Laws, § 34. |
| Pt. I, ch. 9, tit. 5. | 15. . . . | 622. . . | See Penal Code, § 96. |
| Pt. I, ch. 9, tit. 5. | 54. . . . | 629. . . | See Public Lands Laws, § 39. |
| Pt. I, ch. 9, tit. 7. | 1, 4-9.. | 655. . . | Obsolete. See as to Sag Harbor, L. 1830, ch. 174, L. 1876, ch. 362. |
| Pt. I, ch. 9, tit. 8. | 1-5, 9.. | 676. . . | Obsolete. |
| Pt. I, ch. 15, tit. 3. | All. . . | 1334.. | School Law, tit. 15, art. 14. |
| Pt. I, ch. 20, tit. 8. | 61-63, 65-68, 78-77.. | 2223.. | See Penal Code, §§ 274- 275. |
| Pt. I, ch. 20, tit. 15. . . . | 13-14.. | 2345.. | Obsolete. |
| Pt. III, ch. 1, tit. 5. . . . | 21, 24, 25. . . . | 2630.. | Obsolete. |
| Pt. III, ch. 2, tit. 4. . . . | 231. . . | 2641.. | Obsolete. |
| Pt. III, ch. 10, tit. 3. . . | 1, 41 42, 51. | 2732.. | Obsolete. |
| Pt. III, ch. 10, tit. 4. . . | 1, 2. . . | 2747.. | Obsolete. |
| Pt. IV, ch. 1, tit. 6. . . . | 34, 41. | 2751.. | Obsolete. |
| Pt. IV, ch. 1, tit. 7. . . . | 18. . . . | 2758.. | Obsolete. |

| Laws of. | Sections. | R. S. 8th ed. | Why repealed. |
|-----------------------|------------|---------------|--|
| 1828, ch. 137. . . . | All. . . . | 2631.. | Obsolete. See Const., art. 6. |
| 1830, ch. 259. . . . | All. . . . | 126. . . | Obsolete. See Const., art. 6, § 21. |
| 1831, ch. 203. . . . | 4. | 2347.. | Superseded by Game Law, § 187. |
| 1832, ch. 246. . . . | All. . . . | 2731.. | See Code Civ. Pro. § 8243. |
| 1833, ch. 56. | 1-3, 5-7. | 508. . . | Obsolete. |

| Laws of. | Sections. | R. S. 8th ed. | Why repealed. |
|--------------------|-----------|---------------|--|
| 1834, ch. 78..... | All.... | 2224.. | Obsolete. |
| 1835, ch. 45..... | All.... | 1213.. | Obsolete. |
| 1835, ch. 123..... | 1..... | 1254.. | Obsolete. |
| 1835, ch. 272..... | 1..... | 2226.. | See Liquor Tax Law, § 30. |
| 1835, ch. 299..... | All.... | 2123.. | Superseded by Co. L. § 210. |
| 1836, ch. 384..... | All.... | 722... | See Canal L. § 11. |
| 1836, ch. 532..... | 3..... | 1213.. | Obsolete. |
| 1839, ch. 375..... | All.... | 2780.. | Obsolete. |
| 1840, ch. 21..... | All.... | 1012.. | Obsolete. |
| 1841, ch. 221..... | All.... | 1219.. | Obsolete. |
| 1841, ch. 223..... | All.... | 1219.. | Obsolete. |
| 1843, ch. 57..... | 3..... | 931... | Obsolete. |
| 1843, ch. 205..... | All.... | 2747.. | Obsolete. |
| 1844, ch. 255..... | 2, 4, 8.. | 677... | Obsolete. |
| 1845, ch. 85..... | 2,4,5,6,7 | 678..... | Obsolete. |
| 1845, ch. 180..... | 22, 28.. | 917... | See Co. L. § 24. |
| 1847, ch. 69..... | All.... | 2273.. | N. Y. Consol. act, § 2124 ff. |
| 1847, ch. 170..... | All.... | 2478.. | Obsolete. |
| 1847, ch. 276..... | 1-7..... | 441... | See Elec. L. § 137. |
| 1847, ch. 455..... | 17,19,25 | | |
| | 26..... | 455... | § 17. See Crim. Code, § 260, other sections obsolete. |
| 1847, ch. 470..... | All.... | 2651.. | See code crim. § 226. |
| 1848, ch. 58..... | All.... | 2655.. | See Co. L. § 235. |
| 1848, ch. 72..... | 1, 2.... | 526... | See Exec. L. §§ 60-65. |
| 1848, ch. 188..... | All.... | 931... | See Code Civ. § 1030 & Mil. code § 2. |
| 1848, ch. 321..... | All.... | 2251.. | N. Y. Consol. Act, § 757. |
| 1849, ch. 124..... | All.... | 2631.. | Obsolete. |
| 1849, ch. 125..... | 20, 21.. | 2634.. | Obsolete. |
| 1850, ch. 155..... | All.... | 680... | Obsolete. |
| 1851, ch. 52..... | All.... | 2299.. | Obsolete. |
| 1851, ch. 163..... | All.... | 2652.. | Obsolete. |
| 1851, ch. 217..... | All.... | 1013.. | Obsolete. |
| 1851, ch. 232..... | All.... | 2655.. | See Co. L. § 235. |

| Laws of. | Sections. | R. S. 8th ed | Why repealed. |
|-------------------|-----------|--------------|--------------------------------------|
| 1851, ch. 488.... | All.... | 533... | See Exec. L. § 55 & Civ. code § 605. |
| 1852, ch. 46.... | All.... | 1085.. | N. Y. Consol. Act, § 826. |
| 1852, ch. 282.... | All.... | 1086.. | N. Y. Consol. Act, § 827. |
| 1853, ch. 142.... | 1, 2.... | 2734.. | Obsolete. |
| 1853, ch. 218.... | All.... | 2319.. | N. Y. Consol. Act, § 2035ff. |
| 1853, ch. 338.... | 4..... | 2635.. | See Const. art. 6. |
| 1853, ch. 406.... | All.... | 1086.. | N. Y. Consol. Act, § 826. |
| 1853, ch. 467.... | All.... | 2266.. | N. Y. Consol. Act, § 2093ff. |
| 1853, ch. 498.... | All.... | 2769.. | N. Y. Consol. Act, §§ 1638-51. |
| 1853, ch. 619.... | All.... | 2321.. | N. Y. Consol. Act, §§ 2040-41. |
| 1854, ch. 188.... | All.... | 2128.. | See Co. L. § 210. |
| 1854, ch. 198.... | All.... | 2632.. | Obsolete. |
| 1855, ch. 64.... | All.... | 293... | Obsolete. |
| 1855, ch. 269.... | All.... | 2128.. | See Town L. § 62. |
| 1855, ch. 471.... | 4..... | 1244.. | See Code Civ. § 933. |
| 1855, ch. 556.... | All.... | 2252.. | N. Y. Consol. Act, §§ 762-3. |
| 1857, ch. 243.... | All.... | 2270.. | N. Y. Consol. Act, §§ 2105-7. |
| 1857, ch. 267.... | All.... | 693... | See Pub. Lands Laws, §§ 50, 51. |
| 1857, ch. 367.... | All.... | 2290.. | N. Y. Consol. Act, §§ 786-8. |
| 1857, ch. 482.... | All.... | 1498.. | See Stock Corp. L., §§ 3-5. |
| 1857, ch. 564.... | All.... | 2742.. | Obsolete. |
| 1857, ch. 615.... | All.... | 1852.. | See Town Law, § 178. |
| 1858, ch. 261.... | All.... | 2281.. | N. Y. Consol. Act, §§ 757, 793. |
| 1858, ch. 282.... | 6, 8.... | 2765.. | N. Y. Consol. Act, §§ 1572-3. |
| 1859, ch. 170.... | All.... | 2742.. | Obsolete. |
| 1860, ch. 57.... | All.... | 2762.. | Obsolete. |
| 1860, ch. 254.... | All.... | 2280.. | N. Y. Consol. Act, §§ 784-5. |
| 1860, ch. 305.... | All.... | 1353.. | See Town Law, § 178. |
| 1860, ch. 522.... | 1, 2.... | 2277.. | N. Y. Consol. Act, §§ 732-5. |
| 1861, ch. 307.... | All.... | 434... | Obsolete. |
| 1863, ch. 412.... | All.... | 2272.. | Obsolete. |
| 1863, ch. 456.... | All.... | 2483.. | Obsolete. |

| Laws of. | Sections. | R. S. 8th ed. | Why repealed. |
|-------------------|-----------|---------------|--|
| 1864, ch. 387.... | All.... | 2325.. | N. Y. Consol. Act, § 2068. |
| 1864, ch. 391.... | All.... | 2750.. | Obsolete. |
| 1864, ch. 583.... | All.... | 1321.. | School Law, tit. 7, art. 7. |
| 1865, ch. 137.... | All.... | 2271.. | N. Y. Consol. Act, §§ 2101-2. |
| 1865, ch. 170.... | 6..... | 2635.. | Obsolete. |
| 1865, ch. 296.... | All.... | 2665.. | N. Y. Consol. Act, §§ 1116. |
| 1865, ch. 712.... | All.... | 2272.. | N. Y. Consol. Act, § 2123. |
| 1866, ch. 95..... | All.... | 2760.. | See Code Crim., §§ 205-6. |
| 1866, ch. 369.... | All.... | 2302.. | N. Y. Consol. Act, § 2084. |
| 1866, ch. 737.... | All.... | 2326.. | N. Y. Consol. Act, § 2064. |
| 1866, ch. 783.... | All.... | 457... | See Penal Code, § 41. |
| 1867, ch. 515.... | All.... | 1764.. | See Railroad Law, §§ 2, 7. |
| 1867, ch. 557.... | All.... | 2483.. | Obsolete. |
| 1867, ch. 971.... | All.... | 2045.. | Superseded by Bus. Corp. L. |
| 1868, ch. 793.... | All.... | 2327.. | N. Y. Consol. Act, § 2056ff. |
| 1868, ch. 857.... | All.... | 2328.. | N. Y. Consol. Act, § 2065ff. |
| 1869, ch. 322.... | All.... | 1399.. | Superseded by L. 1883, ch. 371, § 5. |
| 1869, ch. 361.... | All.... | 693... | See Pub. Lands L, §§ 50-51. |
| 1870, ch. 47..... | All.... | 2762.. | See Code Crim., § 56. |
| 1870, ch. 69..... | All.... | 900... | See Code Civ., 843, and Penal Code, § 96. |
| 1870, ch. 86..... | 1-7, 9... | 443... | §§ 1-7, obs.; § 8 is not repealed and should be included in the code; § 9 is covered by N. Y. Consol. Act, 1124, and by Const., art. 6, §§ 4, 8. |
| 1870, ch. 203.... | 9..... | 2652.. | Obsolete. |
| 1870, ch. 242.... | All.... | 1352.. | See Town Law, § 178. |
| 1870, ch. 408.... | 15..... | 2652.. | Obsolete. |
| 1870, ch. 470.... | 1, 18... | 2635.. | Obsolete. |
| 1870, ch. 539.... | 26-28... | 2070.. | N. Y. Consol Act, §§ 1642, 1648, 1651. |
| 1870, ch. 548.... | All.... | 2278.. | N. Y. Consol. Act, §§ 2101-2, 2119. |

| Laws of. | Sections. | R. S. 8th ed. | Why repealed. |
|-------------------|-----------|---------------|--|
| 1871, ch. 576.... | All.... | 595... | Obsolete. |
| 1871, ch. 610.... | All.... | 2643.. | Obsolete. |
| 1872, ch. 48.... | All.... | 2131.. | See County Law, § 211. |
| 1872, ch. 143.... | All.... | 2239.. | See Town Law, § 181. |
| 1872, ch. 320.... | All.... | 2281.. | N. Y. Consol. Act, § 798, 801. |
| 1872, ch. 685.... | All.... | 2762.. | See Code Crim. Pro., § 56. |
| 1873, ch. 19.... | 4..... | 2752.. | Obsolete. |
| 1873, ch. 186.... | 3..... | 299... | See Penal Code, § 383. |
| 1873, ch. 474.... | All.... | 438... | See Election Law, § 136. |
| 1874, ch. 656.... | All.... | 2728.. | N. Y. Consol. Act, §§ 1093-4. |
| 1875, ch. 249.... | All.... | 2282.. | N. Y. Consol. Act, §§ 772-4. |
| 1875, ch. 378.... | All.... | 2278.. | N. Y. Consol. Act, § 732. |
| 1876, ch. 295.... | All.... | 2775.. | See Code Crim. Pro., §§ 463-5. |
| 1877, ch. 319.... | All.... | 2664.. | Code Civ., § 933. |
| 1877, ch. 419.... | All.... | 2240.. | Obsolete. |
| 1878, ch. 85.... | All.... | 2045.. | Superseded by Bus. Corp. L. |
| 1878, ch. 377.... | All.... | 1364.. | Superseded by Highway L. |
| 1878, ch. 378.... | All.... | 2298.. | N. Y. Consol. Act, §§ 758-61. |
| 1879, ch. 31.... | All.... | 1365.. | Was in effect repealed by the repeal of the amenda- tory act, L. 1889, ch. 120, which was repealed by the Highway Law. |
| 1879, ch. 208.... | All.... | 272... | Superseded by L. 1892, ch. 397, and by Const., art. 3, §§ 3, 6. |
| 1879, ch. 323.... | All.... | 2262.. | N. Y. Consol. Act, § 754. |
| 1880, ch. 135.... | All.... | 2665.. | N. Y. Consol. Act, § 575. |
| 1880, ch. 298.... | All.... | 299... | Unconstitutional. See N. Y. v. Louisiana, 108 U. S., 76. |
| 1880, ch. 480.... | All.... | 2653.. | See N. Y. Const., art. 6, § 14. |
| 1880, ch. 487.... | All.... | 2605.. | See Code Civ. Pro., §§ 2345- 64. |
| 1880, ch. 552.... | All.... | 1087.. | N. Y. Consol. Act, § 137. |
| 1881, ch. 1..... | All.... | 1331.. | See School Law, tit. 5, § 7. |

| Laws of. | Sections. | R. S. 8th ed. | Why repealed. |
|--------------------|-----------|---------------|--|
| 1881, ch. 10..... | All.... | 2628.. | See Const., art. 6. |
| 1881, ch. 49..... | All.... | 2185.. | N. Y. Consol. Act, § 396. |
| 1881, ch. 354..... | 1..... | 1075.. | See County Law, § 220. |
| 1881, ch. 400..... | 1..... | 300... | See Penal Code, § 383. |
| 1881, ch. 432..... | All.... | 2330.. | Unconstitutional. See 107 U. S., 59. |
| 1881, ch. 493..... | All.... | 2276.. | N. Y. Consol. Act, § 2129. |
| 1881, ch. 599..... | All.... | 2089.. | Repealed by L. 1890, ch. 564, but was not included in the schedule of the Gen. Corp. L. of 1892, hence the necessity for being included here. See case of Ottman v. Hoffman, 7 Misc., 714. |
| 1881, ch. 659..... | All.... | 2665.. | Section 1 obsolete; § 2 superseded by Code Civ., § 254. |
| 1882, ch. 108..... | All.... | 571... | Obsolete. |
| 1882, ch. 190..... | All.... | 149... | Superseded by State and Pub. Bldg. Laws. |
| 1882, ch. 409..... | 68, 69.. | 1528.. | See Banking Law, § 55. |
| 1883, ch. 69..... | All.... | 510... | Obsolete. |
| 1883, ch. 309..... | 1-3 | 1076.. | Obsolete. |
| 1883, ch. 329..... | All.... | 291... | Superseded by Const., art. 6, and by L. 1895, ch. 376. |
| 1883, ch. 424..... | All.... | 274... | Superseded by L. 1892, ch. 295. |
| 1884, ch. 133..... | All.... | 493... | See Executive Law, § 74. |
| 1884, ch. 344..... | All.... | 1365.. | Obsolete. |
| 1884, ch. 350..... | All.... | 2637.. | Obsolete. |
| 1885, ch. 118..... | All.... | 863... | See Military Code, § 143. |
| 1885, ch. 262..... | All.... | 494... | See Executive Law, § 73. |
| 1885, ch. 399..... | 3-6 | 2264.. | Obsolete. |
| 1885, ch. 427..... | All.... | 1454.. | See Agr. Law, §§ 20-23. |
| 1886, ch. 646..... | All.... | 784... | Obsolete. |

| Laws of. | Sections. | R. S. 8th ed. | Why repealed. |
|-------------------|-----------|---------------|--|
| 1887, ch. 113.... | All.... | 785... | Obsolete. |
| 1887, ch. 463.... | All.... | 786... | Obsolete. |
| 1887, ch. 546.... | 34..... | 1602.. | See Code Civ. Pro., § 2410. |
| 1887, ch. 675.... | All.... | 1332.. | Obsolete. |
| 1887, ch. 679.... | All.... | 2244.. | See Liquor Tax Law. |
| 1888, ch. 173.... | All.... | 2254.. | Obsolete. |
| 1888, ch. 229.... | All.... | 2507.. | Obsolete. |
| 1888, ch. 416.... | All.... | 787... | Obsolete. |
| 1889, ch. 110.... | All.... | 788... | Obsolete. |
| 1889, ch. 136.... | All.... | 3356.. | Obsolete. |
| 1889, ch. 404.... | All.... | 3399.. | Obsolete. |
| 1890, ch. 125.... | All.... | 3416.. | See Agr. Law, §§ 88-89. |
| 1890, ch. 281.... | All.... | ..... | See Legislative Law, § 46. |
| 1891, ch. 38.... | All.... | ..... | Impliedly repealed by Gen. Corp. L. in the repeal of L. 1870, ch. 322. |
| 1891, ch. 87.... | All.... | 3497.. | Obsolete. |
| 1891, ch. 119.... | All.... | 3497.. | See Insurance Law, § 90. |
| 1891, ch. 206.... | 1..... | 3502.. | Obsolete. |
| 1891, ch. 223.... | All.... | ..... | Obsolete. |
| 1891, ch. 354.... | 3-5 | 3514.. | Obsolete. |
| 1891, ch. 372.... | All.... | 3517.. | Obsolete. |
| 1892, ch. 214.... | All.... | 3523.. | Declared unconstitutional. |
| 1892, ch. 215.... | All.... | 3524.. | Obsolete. |
| 1892, ch. 236.... | All.... | 3525.. | Obsolete. |
| 1892, ch. 332.... | All.... | 3532.. | Obsolete. |
| 1892, ch. 398.... | All.... | 3548.. | Obsolete. |
| 1892, ch. 425.... | All.... | 3579.. | Obsolete. |
| 1892, ch. 623.... | All.... | 3624.. | Obsolete. |
| 1892, ch. 709.... | All.... | 3647.. | Obsolete. |
| 1893, ch. 250.... | All.... | ..... | Obsolete. |
| 1893, ch. 455.... | All.... | ..... | Obsolete. |
| 1895, ch. 774.... | All.... | ..... | Superseded by Liquor Tax Law. |

THE STATE FINANCE LAW.

[This bill was not passed by Legislature.]

REVISORS' NOTE EXPLANATORY OF THE STATE FINANCE LAW.

This chapter of the revision, to be known as the state finance law, embraces all the existing statutes relative to the fiscal affairs of the state and the powers and duties of the comptroller and treasurer in respect to the care, management and disposition of state funds, and such other statutes of a general nature as provide for the management of such funds, the investment of their capital and the disposal of their incomes.

Slight changes have been made concerning the management of state mortgages. Under the existing law, the attorney-general has the execution of the laws relating thereto. It seems more in accordance with the present financial system of the state, that the comptroller should possess all the administrative powers relating to this species of property. The comptroller is properly the custodian of these mortgages and he should institute proceedings for their foreclosure and enforce all the provisions of law relating to the sale of mortgaged lands.

Many of the cumbersome provisions of chapter 150 of the laws of 1837, relating to the care and management of the United States deposit fund have been omitted. The office of loan commissioner is retained; but all moneys received by such commissioners on account of this fund are to be paid by them to the comptroller, who is empowered to invest such moneys in the same manner as other funds. This is the present practice as established by the comptroller under his general power to make regulations for the management of the several funds. (L. 1869, ch. 50, § 81 of the

revision.) This change renders unnecessary all the sections of the act of 1837 (chap. 150), providing for the loaning of money belonging to such fund, and the execution of bonds and mortgages therefor.

The foreclosure of mortgages belonging to such fund has been made to conform to the practice in the case of other foreclosures. The many sections of the original act providing a special method of foreclosure have, therefore, been omitted. In case of a disagreement between the commissioners of a county, a speedy review of their differences by the supreme court is provided. (Revision, § 84.) The contents of the commissioners' annual report to the comptroller have been prescribed. It is also provided that the comptroller shall audit the accounts of the commissioners presented with such report. The report to the board of supervisors of the county contained in the present law is not to be re-enacted. (Revision, § 90.)

In sections 17-21 are contained provisions relating to forms of accounts of state departments and institutions, the accounts of public officers, vouchers, inspection of supplies furnished to state institutions and the entry of the purchase of such supplies, the deposit of moneys received by state institutions in banks, to be designated by the comptroller, and annual inventories of all articles of maintenance on hand in the several state institutions. These provisions have been repeated either at the beginning or end of every annual appropriation and supply bill for a number of years. By their enactment in this revision, a like repetition in future appropriation or supply bills will be unnecessary.

It is not proposed by this revision to make any radical change in the present financial system of the state. It is recommended, however, that the methods of disposing of the income of the common school fund, the literature fund and the United States deposit fund be simplified. The proposed change in respect to these funds is contained in section eighty of the revision. The reasons therefor are stated at length in a note to such proposed section.

A large number of superfluous and obsolete statutes have been included in the repealing schedule and not re-enacted.

There is appended hereto a table showing the disposition of the laws, in a general way, which are repealed by this chapter.

At the end of each section is a note showing the derivation thereof and the changes made in the law, with the reasons therefor.

**CHARLES Z. LINCOLN,
WILLIAM H. JOHNSON,
A. JUDD NORTHRUP.**

THE STATE FINANCE LAW.

AN ACT relating to state finances, constituting chapter ten of the general laws.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER X OF THE GENERAL LAWS.

The State Finance Law.

- Article 1. General fiscal provisions. (§§ 1-36.)
2. The general fund. (§§ 50-51.)
 3. Canal fund and canal debt sinking fund. (§§ 60-66.)
 4. Education funds. (§§ 80-93.)
 5. Miscellaneous funds. (§§ 100-102.)
 6. Laws repealed; when to take effect. (§§ 110-111.)

ARTICLE I.

General Fiscal Provisions.

- Section
1. Short title.
 2. Fiscal year.
 3. Duties of treasurer.
 4. Duties of comptroller.
 5. Treasurer's checks and accounts.
 6. Custody of state securities.
 7. Examination of state securities.
 8. Deposit in banks.
 9. Monthly statement of balance in state depositories.
 10. Deposit of moneys by state officers.
 11. Deposit of money by charitable and benevolent institutions.

Section 12. Proofs required upon audit by the comptroller.

13. Regulations for the transmission of public moneys.

14. Payments of moneys in the treasury not belonging to the state.

15. Temporary loans and revenue bonds.

16. New in place of lost certificates.

17. Forms of state accounts.

18. Itemized and quarterly accounts of public officers.

19. Inspection of supplies and entry in books.

20. Deposit in banks of moneys received by state institutions.

21. Annual inventory and report of institutions.

22. Rendition of accounts.

23. Statements of accounts not rendered.

24. Statements of accounts rendered.

25. Statements of joint accounts.

26. Other remedies preserved.

27. Foreclosures of mortgages by the state.

28. When comptroller shall bid in premises.

29. Conditions of sale.

30. Sale in parcels.

31. Separate accounts for lands purchased or mortgaged.

32. Discharge of mortgages by the state.

33. Payment of prior claims on state lands.

34. Surplus moneys on sale of lands mortgaged to the state.

35. Assignments of mortgages.

36. Compromise of old judgments and debts.

Section 1. Short title.—This chapter shall be known as the state finance law.

§ 2. Fiscal year. — The fiscal year of all offices, asylums, hospitals, charitable and reformatory institutions in this state shall begin with the first day of October and end with the next following thirtieth day of September. All books and accounts in the

offices of the comptroller and treasurer shall be kept by fiscal years. All officers and persons required to render annual accounts to the comptroller or treasurer shall close those accounts on the thirtieth day of September in each year, and render such accounts as soon thereafter as practicable, if no time is specially prescribed by law.

[L. 1831, ch. 320, §§ 24, 25, 26; R. S., 8th ed., p. 610, without material change.]

The words “ if no time is specially prescribed by law ” are new, and are inserted to preserve provisions made for the rendering of accounts in cases where since the passage of this act here re-enacted, other times have been prescribed.]

§ 3. Duties of treasurer. — The treasurer shall receive all moneys paid into the treasury of the state, pay all warrants drawn by the comptroller on the treasury, make no payment out of the treasury except on the warrant of the comptroller, and make a report to the legislature at its annual session, containing an exact statement of the balance in the treasury, at the close of the preceding fiscal year, with a summary of the receipts into and payments from the treasury during such year.

[R. S., pt. I, ch. VIII, tit. 4, §§ 1, 5, 6 ; R. S., 8th ed., p. 518, without change in substance.]

§ 4. Duties of comptroller. — The comptroller shall :

1. Superintend the fiscal concerns of the state.

2. Keep, audit and state all accounts in which the state is interested, and keep accurate and proper books, showing their condition at all times.

3. Examine, audit and settle the accounts of all public officers and other persons indebted to the state, and certify the amount or balance due thereon.

4. Examine, audit and liquidate the claims of all persons against the state, if payment thereof out of the treasury is provided for by law.

5. Draw warrants on the treasury for the payment of the moneys directed by law to be paid out of the treasury, but no such warrant shall be drawn unless authorized by law, and every such warrant shall refer to the law under which it is drawn.

6. Make a report to the legislature at its annual session, containing a complete statement of the funds of the state, its resources, public expenditures during the preceding fiscal year, a detailed estimate of the expenditures to be defrayed from the treasury for the fiscal year beginning October first following, a statement of each object of expenditure, the funds, if any, from which it is to be defrayed, and of all claims against the state presented to him where no provision or an insufficient provision for the payment thereof has been made by law, with the facts relating thereto and his opinion thereon, and suggesting plans for the improvement and management of the public resources, and containing such other information and recommendations relating to the fiscal affairs of the state, as in his judgment should be communicated to the legislature.

7. Represent and vote for the state, either in person or by proxy at all meetings and on all occasions where the state is entitled to representation or vote as stockholder in a corporation or joint stock association.

[R. S., pt. I, ch. VIII, tit. 3, §§ 1, 13 ; R. S., 8th ed., p. 505.

L. 1872, ch. 115 ; R. S., 8th ed., p. 513,

without change in substance, except that subdiv. 8, of section 1 is omitted and made a part of § 22.]

§ 5. Treasurer's checks and accounts.—The comptroller shall countersign and enter in the proper books of his department all checks drawn by the treasurer and all receipts for money paid to the treasurer. No such receipt shall be evidence of payment unless so countersigned. He shall keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants

drawn on and paid by him. He shall draw, in favor of the treasurer, on all corporations or companies in which the state may own stock, for the dividends on such stock as they become due. He shall procure from the books of the banks in which the treasurer makes his deposits, monthly statements of the moneys received and paid out of the same on account of the treasurer. On the first Tuesday of every month, or oftener if he deem it necessary, he shall carefully examine the accounts of the debts and credits in the bank books kept by the treasurer. If he discovers any irregularity or deficiency therein, he shall, unless rectified or explained to his satisfaction, forthwith report the same to the governor.

[R. S., pt. I, ch. VIII, tit. 3, §§ 4, 5, 6, 7, 8; R. S., 8th ed., p. 506,
without change in substance.]

§ 6. Custody of state securities.— All leases, bonds, mortgages, certificates of stock and other securities belonging to the state, and all papers relating to the duties of the comptroller, or of the commissioners of the canal fund, or of the canal board, unless otherwise specially directed, shall be deposited in the office of the comptroller.

[R. S., pt. I, ch. VIII, tit. 3, § 16; R. S., 8th ed., p. 507, L. 1833, ch. 56, § 4; R. S., 8th ed., p. 508,
consolidated with no change in substance.]

§ 7. Examination of state securities.— The comptroller, from time to time, shall examine the securities on which money may be due to the state, and make inquiries relating to the sufficiency of the security for the payment of such money. He shall require the immediate payment of all interest due, and the payment of such part of the principal as he deems necessary for the security and interest of the state.

[R. S., pt. I, ch. VIII, tit. 3, § 9; R. S., 8th ed., p. 506,
with no change in substance.]

§ 8. Deposit in banks.— The state treasurer shall deposit all moneys coming to his hands on account of the state, except such as belong to the canal fund, within three days after receiving the same, in such banks in the cities of Albany and New York, as in the opinion of the comptroller and treasurer are secure and pay the highest rate of interest to the state for such deposits. The moneys so deposited shall be placed to the account of the treasurer. He shall keep a bank-book in which shall be entered his account of deposit in and moneys drawn from the banks in which deposits are made by him, which he shall exhibit to the comptroller for his inspection on the first Tuesday of every month and oftener if required. The treasurer shall not draw any moneys from such banks unless by checks subscribed by him as treasurer and countersigned by the comptroller. No moneys shall be paid by any such bank out of any such deposit except upon such checks. Every such bank shall transmit to the comptroller monthly statements of all moneys received and paid by it on account of the treasurer.

[R. S., pt. I, ch. VIII, tit. 4, §§ 7, 10, 11, 12, 13; R. S., 8th ed., p. 519; L. 1874, ch. 323, last clause of § 1, without change in substance.]

§ 9. Monthly statement of balances in state depositories.— The state treasurer shall cause to be published in the state paper, on or before the tenth day of each month, a detailed statement of the balances in the several banks designated by any state officer or board as a depository of state funds. Such statement shall contain the name of each bank and the amount subject to draft at the close of the month preceding such publication. Similar statements shall be published in such paper by the comptroller, secretary of state, superintendent of the banking and insurance departments and the clerk of the court of appeals, who shall also certify to the state treasurer on or before the tenth day of January, April, July and October in each year, the amount on deposit at the close of the quarter preceding, in the banks designated by them respectively, and the

amounts so certified shall be transferred to the general depository of state funds in the city of Albany, by check signed by the state treasurer and countersigned by the officer making the deposit.

[L. 1877, ch. 245; R. S., 8th ed., p. 1585,
without change in substance.]

§ 10. Deposit of moneys by state officers.— Every state officer or other person except the state treasurer, receiving or disbursing moneys belonging to the state, shall deposit and keep all the moneys received by him, deposited to his official credit in some responsible bank or banking house, to be designated by the comptroller, until such moneys are paid out or disbursed according to law. Every such bank or banking house, when required by the comptroller, shall execute and file in his office an undertaking to the state in such sum and with such sureties as are required and approved by him, for the safekeeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank or banking house, with interest thereon, on daily or monthly balances at such rate as the comptroller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the attorney-general as to its form.

[L. 1888, ch. 326; R. S., 8th ed., p. 535,
without change in substance. The deposit of state funds
by the state treasurer is provided for in section 8, ante.]

§ 11. Deposit of moneys by charitable and benevolent institutions.— All moneys received from the state by any charitable or benevolent institution, supported wholly or partly by moneys received from the state, shall be deposited in such national or state bank or trust company, as the comptroller may designate. Every such bank or trust company shall give an undertaking, as provided in the last section. The treasurer of such institution shall keep all the funds thereof which come into his possession from the state, deposited in his name as such treasurer in such bank or trust company.

[L. 1884, chap. 415; R. S., 8th ed., p. 2150, changed so as to require deposit to be made in banks designated by comptroller. Under the present law the board of managers or trustees have the power of designation.]

§ 12. Proofs required on audit by the comptroller.—The comptroller shall not draw his warrant for the payment of any sum appropriated, except for salaries and other expenditures and appropriations, the amounts of which are duly established and fixed by law, until the person demanding the same presents to him a detailed statement thereof in items and makes all reports required of him by law. If such statement is for services rendered or articles furnished, it must show when, where and under what authority they were rendered or furnished. If for articles furnished, when and where they were furnished and under what authority. If for traveling expenses, the distance traveled, between what places, the duty or business for the performance of which the expenses were incurred, and the dates and items of each expenditure. If for transportation, furniture, blanks and other books purchased for the use of offices, binding, blanks, printing, stationery, postage, cleaning and other necessary and incidental expenses, a bill duly receipted must be attached to the statement. Every such statement must be verified by the person presenting the same to the effect that it is just, true and correct, that no part of the account therein stated has been paid, except as stated therein, and that the balance therein stated is actually due and owing. No payment shall be made to any salaried state officer or commissioner having an office established by law, for personal expenses incurred by him while in the discharge of his duties as such officer or commissioner at the place where such office is located.

No manager, trustee or other officer of any state charitable or other institution, receiving moneys from the state treasury in whole or in part for the maintenance or support of such institution shall be interested in any purchase or sale by any of such officers.

[L. 1891, ch. 144, last paragraph.]

Provisions similar to those contained in this section have, each year, been added to the general appropriation bills. The enactment of this section will render unnecessary the repetition of these provisions in future appropriation bills.]

§ 13. Regulations for the transmission of public moneys.—The comptroller may make such regulations and give such directions from time to time respecting the transmission to the treasury of moneys belonging to the state from the several county treasurers and other public officers as in his judgment is most conducive to the interests of the state. He may, in his discretion, audit, allow and cause to be paid the expenses necessarily incurred under or in consequence of such regulations and directions or so much thereof as he deems equitable and just.

**[L. 1843, ch. 44; R. S., 8th ed., p. 508,
without change in substance.]**

§ 14. Payments of moneys in the treasury not belonging to the state.—Moneys paid to the state treasurer or into the treasury of the state which do not belong to the state, under any law which authorizes their payment to a person entitled to the same, by order of the court or otherwise, or which money has been paid into the treasury by mistake and not on account of any unpaid taxes or debt due the state, or money overpaid to the state on account of taxes, shall not be regarded as belonging to the treasury of the state or any of its funds, but may be paid by the treasurer to the person entitled thereto on the warrant of the comptroller.

**[R. S. part I, ch. VIII, title 3, § 15; R. S., 8th ed., p. 507,
L. 1843, ch. 179; R. S., 8th ed., p. 508,
consolidated with no change in substance.]**

§ 15. Temporary loans and revenue bonds.—From time to time, as the legal demands on the treasury render it necessary, the comptroller may make such temporary loans at a rate of interest not exceeding five per centum per annum, as are necessary to dis-

charge such demands, and may issue transfer certificates for the amount borrowed, with interest, payable quarterly, and the principal payable at such time or times not exceeding seven years, at which in his opinion, the treasury will be in a condition to pay the same from the revenues of the state applicable to their payment, and so much of such revenues as will be sufficient to pay the amount borrowed, are pledged to that object. He may issue bonds in anticipation of the state tax, authorized to be levied for the current expenses of the government, not exceeding fifty per centum of such tax to any one year, payable on or before May fifteenth following the date of issue, and drawing interest at the least rate obtainable by him. The proceeds of such bonds shall be applied in payment of the current expenses of the government and to no other object. When received into the treasury so much as may be necessary of the taxes in anticipation of which any such bonds are issued, shall be applied exclusively to the payment of the principal and interest of such bonds. He shall include in his annual report, a detailed statement of all such loans made and bonds issued during the year, and of his proceedings in relation thereto.

[R. S., part I, ch. VIII, title 3, §§ 11, 12; R. S., 8th ed., pp. 506-7, L. 1835, ch. 52; R. S., 8th ed., p. 507; L. 1837, ch. 150, § 59; R. S., 8th ed., p. 586; L. 1880, ch. 100; R. S., 8th ed., p. 509; consolidated without change in substance.]

§ 16. New in place of lost certificates.—The comptroller may issue to the lawful owner of any certificate or bond issued by him in behalf of this state, which he is satisfied, by due proof filed in his office, has been lost or casually destroyed, a new certificate or bond, corresponding in date, number and amount with the certificate or bond so lost or destroyed, and expressing on its face that it is a renewed certificate or bond. No such renewed certificate or bond shall be issued unless sufficient security is given to satisfy the lawful claim of any person to the original certificate or bond, or to any interest therein. The

comptroller shall report annually to the legislature the number and amount of all renewed certificates or bonds so issued.

**[L. 1857, ch. 721; R. S., 8th ed., p. 616,
without change in substance.]**

§ 17. Forms of state accounts.—The comptroller shall prepare a form of accounts to be observed in every state charitable institution, reformatory, house of refuge, industrial school, department, board or commission, which shall be accepted and followed by them respectively, after thirty days' notice thereof. Such forms shall include such a uniform method of bookkeeping, filing and rendering of accounts as may insure a uniform statement of purchase of like articles, whether by the pound, measure or otherwise, as the interests of the public service may require, and a uniform method of reporting in such institutions and departments, the amount and value of all produce and other articles of maintenance raised upon the lands of the state, and which may enter into the maintenance of such institution or department. All purchases for the use of any department, office or work of the state government shall be for cash. Each voucher, whether for a purchase or for services or other charge shall be filled up at the time it is taken. Where payment is not made directly by the state treasurer, proof in some proper form shall be furnished on oath that the voucher was so filled up at the time it was taken, and that the money stated therein to have been paid was in fact paid in cash or by check or draft on some specified bank.

**[L. 1842, ch. 310; R. S., 8th ed., p. 532, as amended by
L. 1855, ch. 535, § 3;
L. 1888, ch. 270, § 1; R. S., 8th ed., p. 2151.]**

(Annual supply bill of 1888 and repeated in each subsequent year), consolidated without change of substance, except that the last sentence of § 1 of ch. 310 of L. 1842, relating to payments by the canal auditor, is omitted as obsolete.

That part of this section prescribing the forms of accounts of certain institutions appears in all annual supply bills. Its enactment in this general law will make the repetition of such a provision in future supply bills unnecessary.】

§ 18. Itemized and quarterly accounts of public officers.— The proper officer of each state hospital, asylum, charitable or reformatory institution, the state commission in lunacy, the state board of charities, the state board of health, the commissioners of fisheries, and all other state commissions, commissioners and boards, shall, quarterly, on January first, April first, July first and October first of each fiscal year, render to the comptroller a detailed and itemized account of all receipts and expenditures of such hospital, asylum, institution, commission, board or commissioners during the three months next preceding. Such accounts shall give in detail the source of all receipts, including the sums received from any county, and be accompanied by original and proper vouchers covering the items of expenditures, unless such vouchers have been previously filed with the comptroller or with the county treasurer or other officer entitled to the same, and have appended or annexed thereto the affidavit of the officer making the same to the effect that the goods and other articles therein specified were purchased and received by him or under his direction or that the indebtedness was incurred under his direction; that the goods were purchased at a fair cash market price and that neither he nor any person in his behalf had any pecuniary or other interest in the articles purchased or in the indebtedness incurred; that he received no pecuniary or other benefit therefrom, nor any promises thereof; that the articles contained in such bill were received by him and that they conformed in all respects to the goods ordered by him or under his direction, both in quality and quantity.

【L. 1888, ch. 270, § 1; R. S., 8th ed., p. 2150.

Annual supply bill of 1888 and repeated in the supply bill of each subsequent year.】

§ 19. Inspection of supplies and entry in books.— The steward, clerk or bookkeeper in every such institution or department shall receive and examine all articles purchased or received for the maintenance thereof, compare them with the bills for the same, ascertain whether they correspond in weight, quality or quantity, and inspect the supplies thus received. Such steward, clerk or bookkeeper shall enter each bill of goods thus received in the books of the institution or department at the time of receipt thereof. He shall make a full memorandum in the book of accounts of such institution of any difference in weight, quality or quantity of any article received from the bill thereof, and no goods or other articles of purchase or farm or garden production of lands of the institution shall be received unless so entered in such book with the proper bill, invoice or statement, according to the form of accounts and record prescribed by the comptroller. In accounts for repairs or new work, the name of each workman, the number of days employed and the rate and amount of wages paid to him shall be given. If contracts are made for repairs or new work, or for supplies, a duplicate thereof, with specifications, shall be filed with the comptroller. The steward of every such institution or other officer performing the duties of a steward under whatever name, shall take, subscribe and file with the comptroller, before entering on his duties, the constitutional oath of office, and may administer oaths and take affidavits concerning the business of such institution.

[L. 1888, ch. 270, § 1; R. S., 8th ed., p. 2151.

Annual supply bill of 1888 and repeated in each subsequent year.]

§ 20. Deposit in banks of moneys received by state institutions.— Every state institution receiving moneys, in whole or in part, from the state treasury for maintenance, shall deposit all its funds received from sources other than the state in some bank or banking-house at interest, which shall give a bond with sufficient sureties for the security of such deposit, to be approved by the comptroller. All state institutions or departments, except

charitable institutions, reformatories, houses of refuge, and state industrial schools, shall pay into the treasury, quarterly, all receipts and earnings other than receipts from the state treasury.

[L. 1888, ch. 270, § 1; R. S., 8th ed., p. 2150.

Annual supply bill of 1888 and repeated in each subsequent year.]

§ 21. Annual inventory and report of institutions.— Every state charitable institution, reformatory, house of refuge and industrial school shall file with the comptroller annually, on or before October twentieth, a certified inventory of all articles of maintenance on hand at the close of the preceding fiscal year, stating the kind and amount of each article. Every state charitable institution, reformatory, house of refuge, the state agricultural experiment station, and the quarantine commissioners shall, in their annual report to the legislature, make an inventory of each article of property, stating its kind and amount, except supplies for maintenance, belonging to the state and in their possession on October first of each year.

[L. 1888, ch. 270, § 1; R. S., 8th ed., p. 2151.

Annual supply bill of 1888 and repeated in each subsequent year.]

§ 22. Rendition of accounts. — The comptroller, from time to time, shall require all public officers and other persons receiving moneys or securities, or having the care and management of any property of the state, of which an account is or is required to be kept in his office, to render statements thereof to him ; and all such officers or persons shall render such statements at such time and in such form as he requires, and at all times when required by law. He may require any one presenting to him an account or claim for audit or settlement, to be examined upon oath before him, touching such account or claim, as to any facts relating to its justness or correctness. He may issue a notice to any person receiving moneys of the state for which he does not account or to the legal representatives of such a per-

son, requiring an account and vouchers for the expenditure of such moneys to be rendered at a time to be fixed not less than sixty nor more than ninety days from the date of this service of the notice. Such notice shall be served by delivering a copy thereof to such person or representative or leaving such copy at his usual place of abode ; and if such service is made by the sheriff of the county, where the person served resided, the certificate of such sheriff, and if made by any other person, the affidavit of such other person, shall be presumptive evidence of such service.

[R. S., pt. I, ch. VIII, tit. 3, §§ 2, 3, 19-22 ; R. S., 8th ed., p. 505-506, 514,
without change in substance.]

§ 23. Statements of account not rendered. — The comptroller shall state an account against every person who receives moneys belonging to the state for which he does not account when required, charging him with the amount received according to the best information which the comptroller may have in regard thereto, with interest at six per centum per annum from the time when the same was due and payable, and shall deliver a certified copy of such account to the attorney-general for prosecution, and such certified copy shall be presumptive evidence of the indebtedness of such person to the state for the amount stated therein. The person against whom an action is brought by the attorney-general on any such account, shall be liable for and pay the costs of the action whether final judgment therein shall be against him or in his favor, unless he is sued as the representative of the person originally accountable for such moneys.

[R. S., pt. I, ch. VIII, tit. 3, §§ 23, 24, 25 ; R. S., 8th ed., pp. 514-515,
without change in substance.]

§ 24. Statements of accounts rendered.—The comptroller shall immediately examine the accounts rendered by every public officer or other person receiving moneys belonging to the state, with

the vouchers, and audit, adjust and make a statement thereof. If any necessary vouchers are wanting or defective, he shall give notice to such person to furnish proper vouchers within not less than sixty nor more than ninety days, and at the expiration of such time he shall audit, adjust and make a statement of such accounts on the vouchers and proofs before him. He shall transmit a copy of every account as settled to such persons, and if any balance is stated therein to be due the state, and is not paid to the treasurer within ninety days after its transmission to such person, the comptroller shall deliver a certified copy of such account to the attorney-general for prosecution. Such certified copy shall be presumptive evidence of the indebtedness of such person to the state for the balance so certified, and if on the trial of any action brought thereon, the defendant gives any evidence other than such as was produced to the comptroller before the statement of such accounts, and by means thereof, the balance so stated is reduced or no balance is found to be due, the defendant shall be liable for and pay the costs of such action.

【R. S., pt. I, ch. VIII, tit. 3, §§ 26-29; R. S., 8th ed., p. 515, without change in substance.】

§ 25. Statement of joint accounts. — The comptroller may, in his discretion, settle separately the accounts of one or more persons receiving moneys of the state for which they are accountable to the state. In such case no person shall plead as a defense to an action brought for a balance certified to be due, from him, the non-joinder of any other person, or give in evidence upon the trial thereof the fact that any other person was concerned with him in the receipt or expenditure of such moneys.

【R. S., pt. I, ch. VIII, tit. 3, §§ 30, 31, without change in substance.】

§ 26. Other remedies preserved. — This article does not preclude the state from the enforcement of any other remedy, for the recovery of any debt due or to become due to the state.

【R. S., pt. I, ch. VIII, tit. 3, § 32 ; R. S., 8th ed., p. 515, without change in substance.】

§ 27. Foreclosure of mortgage by the state. — The comptroller shall cause all mortgages belonging to the state upon which default is made in the payment of principal or interest, to be foreclosed, whenever, in his judgment, it may be necessary for the protection of the interest of the state. All actions or proceedings for that purpose shall be prosecuted or conducted by the attorney-general.

[R. S., pt. I, ch. IX, tit. 6, §§ 1-3; R. S., 8th ed., p. 651.

The procedure is made to conform with that provided by law in ordinary cases of mortgage foreclosure. Under the present law state mortgages are to be foreclosed by giving notice "in the manner in which mortgages are authorized to sell under a power of sale." The attorney-general is required to give the notice. State mortgages are in the custody of the comptroller and the record in his office shows when they are due and when the right of foreclosure might properly be exercised. It seems, therefore, that he is the proper officer to institute proceedings.]

§ 28. When comptroller shall bid in premises. — If on a sale on any such foreclosure, there is not bid and paid or received the amount unpaid on the mortgage, for principal and interest and the costs and expenses of the foreclosure, the comptroller may cause the sale to be postponed and have the value of the premises appraised by two competent and disinterested persons selected by him. If the premises are appraised at a sum equal to or exceeding the amount unpaid to the state, including the costs of the foreclosure and expenses of the appraisal, the comptroller on the sale thereof, shall bid for the state such amount, if necessary to prevent a sale of the premises at a less sum. If the premises are appraised at a sum less than such amount, the comptroller may bid the amount of the appraisement and no more. If the premises are struck off for a sum less than such amount, no greater sum shall be credited to the mortgagor or any other person, on account of such sale than the sum bid for the premises sold, deducting therefrom all costs and expenses of the sale and appraisal. The appraisers shall receive a reason-

able compensation for their services, to be allowed by the comptroller and paid out of the treasury.

[R. S., pt. I, ch. IX, tit. 6, §§ 4-8 ; R. S., 8th ed., pp. 651-2, without change in substance, except that the comptroller is given the duties relating to the bidding in of premises sold on foreclosure, now vested in the attorney-general. The attorney-general is properly given the control of the legal proceedings of foreclosure, but the comptroller as the custodian of the state mortgages should be given the control of the sale of the mortgaged premises under foreclosure.]

§ 29. Conditions of sale.—At a sale under any such foreclosure the comptroller may require the purchaser to pay, at the time of the sale, the costs and expenses thereof, and at least one-fourth of the amount so unpaid; and for securing the remainder of the moneys due the state, on the execution of a deed or of the affidavits of sale to the purchaser, he may accept from the purchaser a bond and mortgage to the state on the premises sold, payable in six equal annual installments, with annual interest at six per centum. If the mortgaged premises sell for a greater sum than the amount so unpaid and the costs and expenses of the sale, the comptroller shall also require the purchaser at the time of sale to make payment of such surplus. The expense, incurred by the attorney-general in any action or proceeding for the foreclosure of any such mortgage, shall be paid to him out of the treasury.

[R. S., pt. I, ch. IX, tit. 6, §§ 9-11, 17; R. S., 8th ed., p. 652, without change in substance, except that the duties of the attorney-general in relation to the sale under foreclosure are transferred by this section to the comptroller. Section ten is not incorporated since no state mortgage can now bear a rate of interest exceeding six per centum and is therefore obsolete.]

§ 30. Sale in parcels.—On any such foreclosure, if any person having title to a part of the mortgaged premises, by conveyance

from or through the mortgagor, delivers to the comptroller an affidavit stating that he has such title, and describing with certainty such part, the comptroller on the sale under such foreclosure shall cause to be first sold that part of the mortgaged premises not specified in the affidavit. If the part so sold does not produce enough to satisfy the amount so unpaid and costs and expenses he shall immediately cause such part or parts of the premises as have been conveyed by the mortgagor and described in any such affidavit, to be sold, and if more than one part of such premises have been so conveyed, and an affidavit made as herein required, the comptroller shall cause such parts to be sold in the inverse order of the dates of such conveyances, if it is necessary to sell them, commencing with the part last conveyed by the mortgagor, and such sale shall cease when the proceeds of the sale are sufficient to satisfy the amount so unpaid and such costs and expenses.

[L. 1839, ch. 381, § 1; R. S., 8th ed., p. 654,

without change in substance, except that the comptroller is substituted for the attorney-general.]

§ 31. Separate accounts for lands purchased or mortgaged.—The comptroller on application to him for that purpose, shall open an account in his office against any person, for a part or subdivision of a lot of land purchased from or mortgaged to the state, for the proportionate part of the moneys on any such part or subdivision, and thereafter give credit on the several parts or subdivisions, as the persons making payments may require. He may credit any prior payment to a part or subdivision if such payment appears by satisfactory proof to have been originally intended to be paid on such part or subdivision or by or for the use of the person claiming the credit, whether so expressed in the receipts or not. No part of any such payments shall be applied to the reduction of the principal unpaid on any such part or subdivision, unless the payments exceed the interest, calculated on the principal due on such part, or subdivision, to the day when such part or subdivision is to be paid off, or a new account opened therefor. If separate receipts be given by the treasurer, for any payments which are claimed

to be credited to the account of any such part or subdivision, the receipts shall be delivered to the comptroller and filed in his office. Separate accounts shall not be opened under this section unless a map and survey of the whole lot is filed with the comptroller, showing particularly the part or subdivision for which such account is to be opened, and satisfactory proof furnished the comptroller that the residue of the lot is sufficient security for the sum remaining unpaid thereon.

[R. S., pt. I, ch. VIII, tit. 3; §§ 33, 34, 35, 40; R. S., 8th ed., p. 516, without change in substance.]

§ 32. Discharge of mortgages.—The treasurer's receipt, countersigned by the comptroller, setting forth that the whole sum secured by the mortgage held by the state has been paid, shall be a sufficient discharge of the mortgage, and the officer in whose office such mortgage is recorded shall record such receipt as a satisfaction of the mortgage and satisfy the mortgage of record. When any part or subdivision of any lot mortgaged to or purchased from the state, for which a separate account has been opened, is paid, the comptroller shall execute a discharge of such part or subdivision from such mortgage.

If a map and survey of the whole lot is filed with the comptroller, showing particularly a part or subdivision for which no separate account has been opened, and the owner thereof pays into the treasury its full proportion of principal and interest unpaid, and satisfactory proof is furnished the comptroller that the residue of the lot is sufficient security for the sum remaining unpaid, he may execute a like discharge of such part or subdivision.

[R. S., pt. I, ch. VIII, tit. 3, §§ 36-39; R. S., 8th ed., pp. 516-7, without change in substance.]

§ 34. Surplus moneys on sale of lands mortgaged to the state.—If real property mortgaged to the state, or purchased for the benefit of the state, or for which a certificate has been given to a former purchaser, is sold by the comptroller, state engineer or the commissioners of the land office for a greater sum than the

amount due to the state, with the costs and expenses of the foreclosure or resale, the surplus moneys received into the treasury after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure or of the forfeiture of the original contract. On a sale of such real property by the comptroller, the state engineer or the commissioners of the land office, the comptroller shall give credit to the mortgagor on his bond or to the original purchaser on his contract, for the amount at which such property has been sold, after deducting therefrom all the costs, charges and expenses of the sale. If interfering claims to such surplus moneys be made, they shall be referred by the comptroller to the attorney-general, whose decision as to the rights of the respective claimants shall be final and conclusive as to any claim against the state. The comptroller shall not draw his warrant for any moneys authorized by this section to be refunded, except on satisfactory proof, by affidavit or otherwise, of the legal right of the person in whose favor such warrant is applied for.

[R. S., pt. I, ch. VIII, tit. 8, §§ 10, 11, 12; R. S., 8th ed., p. 531, without change in substance, except the transfer of certain powers from the attorney-general to the comptroller.]

§ 35. Assignments of mortgages; releases from judgments.—The comptroller, on the written request of the owner in actual possession of real property mortgaged to the state, may assign such mortgage, with the bond or other instrument accompanying the same, on payment into the treasury of the amount of principal and interest unpaid on such mortgage. The comptroller, with the consent of the attorney-general, if satisfied that the interests of the state will not be prejudiced thereby, may release any portion of any real property subject to a judgment in favor of the people of the state from the lien created by such judgment.

[R. S., pt. I, ch. VIII, tit. 8, §§ 6, 9; R. S., 8th ed., p. 530.
R. S., pt. I, ch. VIII, tit. 3, § 41; R. S., 8th ed., p. 517,
consolidated without change in substance.]

§ 36. Compromise of old judgments and debts.—The attorney-general and comptroller, or either of them, may acknowledge satisfaction of judgment in favor of the people of the state when the same is settled or discharged. The comptroller, with the approval of the attorney-general, may compromise, settle, release and discharge any judgment or contract debt not in judgment in favor of the state, after the lapse of ten years since the recovery of the judgment, or since the debt became due, on such terms as the comptroller and attorney-general deem for the best interest of the state.

[R. S., pt. I, ch. VIII, tit. 8, § 9; R. S., 8th ed., p. 530, L. 1878, ch. 291; R. S., 8th ed., p. 509, consolidated without change in substance.]

ARTICLE II.

The General Fund.

Section 50. General fund.

51. Payments out of the general fund.

§ 50. General fund.—The stocks, debts and other property known as the general fund of this state, the income and revenues thereof, and the additions which may be made thereto, shall continue to be known as the general fund. All money paid into the treasury of the state, not belonging to any specific fund established by law, belongs to and is a part of the general fund.

[R. S., pt. I, ch. IX, tit. 1, §§ 1, 2, 3; R. S., 8th ed., p. 555, without change in substance.]

§ 51. Payments out of the general fund.—All moneys authorized by law to be paid out of the treasury of the state and not payable from any specific fund established by law shall be paid out of the general fund.

[R. S., pt. I, ch. IX, tit. 1, § 16; R. S., 8th ed., p. 561.

This section makes a general provision for payments from the general fund without specifying the different charges upon such fund.]

[Note.—A large number of superfluous and obsolete enactments relating to the transfer of stock from one fund to another, the assignment of bonds, etc., which are not now enforceable have been repealed and not re-enacted.]

ARTICLE III.

Canal Fund and Canal Debt Sinking Fund.

Section 60. Canal fund.

61. Commissioners of the canal fund.
62. Deposit of funds.
63. Charges on the canal fund.
64. Rules and regulations.
65. When money may be borrowed for the canal fund.
66. Annual report of commissioners of canal fund.

§ 60. Canal fund.—The canal fund shall continue to consist of the following property:

1. Real property granted for the construction of the canals, by the state, by companies, or by individuals, and remaining unsold.
2. Debts due for portions of such real property heretofore sold.
3. All moneys received from the sale or use of the surplus waters of any canal.
4. All moneys recovered in suits for penalties or damages instituted under the canal law.
5. All moneys required by law to be paid into the canal fund.

**[R. S., pt. I, ch. IX, tit. 2, § 1, subs. 1, 2, 6 and 7; R. S., 8th ed., p. 563,
without change in substance.]**

§ 61. Commissioners of the canal fund.—The canal fund and the canal debt sinking fund shall continue to be superintended and managed by the commissioners of the canal fund, a majority

of whom, including the comptroller, shall be a quorum for the transaction of business. The care and disposition of all lands belonging to the canal fund shall be vested in the commissioners of the land office. Investments for the canal fund and the canal debt sinking fund shall be made by the comptroller subject to the approval of the commissioners of the canal fund in such securities as he is authorized by law to invest the other funds of the state.

【R. S., pt. I, ch. IX. tit. 2, § 4; R. S., 8th ed., p. 564,
L. 1887, ch. 245 (last clause of § 1.); R. S., 8th ed., p. 616,
consolidated, without change in substance.】

§ 62. Deposit of funds.—The commissioners of the canal fund may deposit the moneys belonging to such fund, or the canal debt sinking fund, with any safe incorporated moneyed institution or banking association in this state, and may make such contracts therewith for the interest on and the duration of such deposits as will best promote the interest of the funds.

【L. 1830, ch. 286, § 1; R. S., 8th ed., p. 566,
without change in substance.】

§ 63. Charges on the canal fund.—All moneys expended in the construction, repair or improvement of the canals now authorized by law, or allowed or expended by the commissioners of the canal fund, or the superintendent of public works or other officer or assistant employed on such canals pursuant to law, with the compensation of such officers respectively, including the salary of the superintendent of public works, shall be charged to the canal fund unless otherwise expressly provided by law, and the comptroller shall also charge from time to time so much for the services of the clerks in his office, devoted to the accounts and revenues of the canals, as in his opinion is just.

【R. S., pt. I, ch. IX, tit. 2, § 13; R. S., 8th ed., p. 566,
without change in substance.】

§ 64. Rules and regulations.—The commissioners of the canal fund, from time to time, shall prescribe such rules and regula-

tions relative to the transfer of all or any of the public stocks of this state, constituting the debt known as the canal debt, and the division and consolidation of the certificates thereof, as they think advisable. They may require such returns to be made to the comptroller by the officer or person authorized by law to transfer such stocks, and pay the interest on any loan, as they deem reasonable.

**[L. 1830, ch. 242; R. S., 8th ed., p. 607,
without change in substance.]**

§ 65. When money may be borrowed for the canal fund.—If the legislature, the canal board, the commissioners of the canal fund or the superintendent of public works, lawfully authorize or require the payment of any sum of money out of the canal fund, for any purpose connected with canal expenditures, and there is not money in such fund applicable to such purpose, the commissioners of the canal fund may borrow such sum of money, payable in such time not exceeding eighteen years, and bearing such rate of interest not exceeding five per centum, as they deem most beneficial to the interests of the state, and the comptroller may issue bonds therefor in the manner provided by law.

**[L. 1849, ch. 228; R. S., 8th ed., p. 616,
without change in substance.]**

§ 66. Annual report of commissioners of canal fund.—The commissioners of the canal fund shall annually make a report to the legislature at the opening of its session which shall exhibit a statement of the funds intrusted to or under their care and management during the next preceding fiscal year, and recommend from time to time to the legislature, the adoption of such measures as may be thought proper by them for the improvement of the fund.

**[R. S., pt. I, ch. IX, tit. 2, § 5; R. S., 8th ed., p. 564,
L. 1831, ch. 320, § 27; R. S., 8th ed., p. 610,
without change in substance.]**

[Note.—A number of obsolete enactments relating to canal stock, annual loans to general fund, etc., have been omitted.]

ARTICLE IV.

The Educational Fund.

Section 80. The education fund.

81. Investments.

82. The United States deposit fund.

83. Appointment and qualification of loan commissioners.

84. Powers of single commissioner; books and records.

85. Supervision of existing loan office mortgages.

86. New accounts for parts of premises.

87. Power of commissioners to maintain actions.

88. Foreclosure and redemption of loan office mortgages.

89. Purchases for the state.

90. Report to comptroller.

91. Certified copy of original mortgage.

92. Fees of loan commissioners.

93. The college land scrip fund.

§ 80. The education fund.— The common school fund, the literature fund, and the United States deposit fund, shall continue to consist of all moneys, securities or other property in the treasury of the state, or under the control of any state officer, and of all debts due the state, or real property owned by it, belonging to such fund. The proceeds of all lands which belonged to the state on January first, eighteen hundred and twenty-three, except the parts thereof reserved or appropriated to public use, or ceded to the United States, shall belong to the common school fund.

Of the income of the United States deposit fund, twenty-five thousand dollars shall annually be added to the capital of the common school fund. The remainder of such income, together with the income of the common school fund, and of the literature fund and also such amounts as may be raised or received by taxation or otherwise therefor, shall constitute the education fund, and appropriations therefrom may be made annually for the support of the educational system of the state, to be distributed by the superintendent of public instruction, and the university of the state of New York, in the same manner provided by law.

[The capital of the common school fund on September thirtieth, eighteen hundred and ninety-four, amounted to four million three hundred and ninety-six thousand one hundred and forty dollars and seventy-seven cents.

This fund produced as an income during the fiscal year ending at that time, the sum of one hundred and seventy-three thousand nine hundred and thirty-two dollars and ninety-four cents; to this amount was added by transfer from the revenue of the United States deposit fund the sum of seventy-five thousand dollars, making a total revenue credited to the common school fund of two hundred and forty-eight thousand nine hundred and thirty-two dollars and ninety-four cents.

Of this the superintendent of public schools distributed among the common schools, according to the appropriation act of eighteen hundred and ninety-four (L. 1894, chap. 664) two hundred and forty-five thousand dollars.

By the terms of the items one hundred and seventy thousand dollars of this amount was to be taken from the revenue of the common school fund, and seventy-five thousand from the revenue of the United States deposit fund. The transfer above referred to was probably made by the comptroller to simplify the keeping of accounts in relation to the amounts appropriated from these funds for the benefit of the common schools.

There was appropriated by the same act, to be paid from the revenue of the common school fund, the sum of six thousand dollars for the support of Indian schools.

The capital of the common school fund is annually increased by an appropriation of twenty-five thousand dollars from the revenue of the United States deposit fund, according to a provision contained in article nine, section three of the constitution. This section also provides that the revenues of the common school fund shall be applied to the support of the common schools.

The capital of the literature fund shall be "preserved inviolate and its revenue shall be applied to the support of academies." (Const., art. IX., § 3.) The capital of this fund on September thir-

tieth, eighteen hundred and ninety-four, was two hundred and eighty-four thousand two hundred and one dollars and thirty cents, and the amount of income derived therefrom was nine thousand three hundred and nineteen dollars and ninety-seven cents. By the appropriation act of eighteen hundred and ninety-four, twelve thousand dollars was appropriated from this income for the benefit of academies, to be distributed by the regents of the university. Each year it has been the custom of the comptroller to transfer to the revenue of the literature fund the sum of thirty-four thousand dollars from the revenue of the United States deposit fund, and sixty thousand dollars from the general fund. The total amount appearing on the books of the comptroller to the credit of the revenue of the literature fund was, on September thirtieth, eighteen hundred and ninety-four, one hundred and three thousand three hundred and nineteen dollars and ninety-seven cents. All this amount is distributed pursuant to Laws of eighteen hundred and ninety-two, chapter three hundred and seventy-eight, section twenty-six, by the university of the state of New York, among the several academies of the state. Items appropriating certain sums, amounting to sixty thousand dollars from the general fund, thirty-four thousand dollars from the income of the United States deposit fund, and twelve thousand dollars from the income of the literature fund, have been made in the appropriation bills for many years.

By the constitution it is provided that the capital of the United States deposit fund be preserved inviolate, and that twenty-five thousand dollars of its income be annually applied to the capital of the common school fund.

The capital of such fund on September thirtieth, eighteen hundred and ninety-four, was four million fourteen thousand, five hundred and twenty dollars and seventy-one cents, and the income therefrom for the fiscal year ending at that time was two hundred and eight thousand six hundred and sixty-four dollars and fourteen cents. Of this amount, twenty-five thousand dollars was transferred to the capital of the common school fund, according

to the constitutional requirement; seventy-five thousand dollars was transferred to the revenue of such fund to be expended for the benefit of common schools, by virtue of an item in the appropriation act of eighteen hundred and ninety-four (Chap. 654); twenty-one thousand five hundred and twenty-four dollars and ninety-six cents was expended for establishing and conducting teachers' examinations, by virtue of an item in the appropriation act of eighteen hundred and ninety-four, to be distributed by the superintendent of public instruction in the manner provided by Laws of eighteen hundred and ninety-four, chapter five hundred and fifty-six, title eleven, superseding laws of eighteen hundred and seventy-seven, chapter four hundred and twenty-five; twenty-five thousand, eight hundred and thirty-five dollars and sixty-two cents was expended for the benefit of free libraries, to be expended by the university under sections fourteen, forty-seven and fifty of Laws of eighteen hundred and ninety-two, chapter three hundred and seventy-eight; thirty-four thousand dollars was transferred to the revenue of the literature fund and drawn therefrom as dividends to academies in the state, to be distributed by the university of the state pursuant to laws of eighteen hundred and ninety-two, chapter three hundred and seventy-eight, section twenty-six.

The amount of the capital of all these funds on September thirtieth, eighteen hundred and ninety-four, was eight million six hundred and ninety-six thousand eight hundred and sixty-two dollars and seventy-eight cents, which produced an income for the fiscal year ending at that time of three hundred and ninety-one thousand nine hundred and seventeen dollars and five cents; upon this amount there were fixed charges for "premiums and interest on investments" in the sum of one hundred and eighteen thousand three hundred and sixty-one dollars and thirty-nine cents; there was also transferred to the capital of the United States deposit fund, to make good losses accrued by reason of the foreclosure of loan mortgages, the sum of five thousand, three hundred and seventy-six dollars and twenty-four cents, so that the total amount of the income of these funds actually available

for the year ending September thirtieth, eighteen hundred and ninety-four, was the sum of two hundred and sixty-four thousand seven hundred and seventy-nine dollars and forty-two cents.

Upon this amount by appropriation, the legislature of eighteen hundred and ninety-four authorized the drawing of three hundred and seventy-five thousand seven hundred dollars.

The sum of three hundred and seventy-three thousand seven hundred and forty-seven dollars and thirty-five cents was actually drawn from the treasury by virtue of these appropriations and became a charge upon the revenue of these funds, producing a deficiency in such revenue for the year ending September thirtieth, eighteen hundred and ninety-four, of one hundred and eight thousand nine hundred and sixty-seven dollars and ninety-three cents.

The legislature of eighteen hundred and ninety-five appropriated from the revenues of these funds an amount equal to that appropriated in eighteen hundred and ninety-four. So that unless the income of such funds has materially increased during the fiscal year ending September thirtieth, eighteen hundred and ninety-five, the deficiency must have become much larger.

To make good this deficiency, it will be necessary for subsequent legislatures to reduce the amount appropriated for the maintenance of the educational projects generally provided for by the incomes of these funds, or make an appropriation from the general fund, or the free school fund to the income of such funds.

By the annual appropriation acts of each year for many years specific appropriations have been made from the capital of the common school and United States deposit funds for investment.

By the constitution, article nine, section three, the capital of these funds must be "preserved inviolate." So no appropriation can be made that would impair the capital of such funds. By chapter fifty of the laws of eighteen hundred and eighty-nine, proposed to be re-enacted in the following section of this revision, the comptroller is authorized to invest and keep invested all moneys belonging to these funds. It is unnecessary to make an appropriation for the purpose of such investment. The comptroller has

always disregarded the specific limitation to the amount to be invested, made by the annual appropriation acts. As, for instance, during the fiscal year ending September thirtieth, eighteen hundred and ninety-four, the comptroller invested of the capital of the common school fund the sum of one million one hundred and thirty-six thousand four hundred and nine dollars and seventy-two cents, and still had a balance of three hundred and eight thousand eighty-four dollars and seventy-one cents in the treasury uninvested.

The same is true as to the capital of the United States deposit fund.

These provisions appropriating money from the capital of these funds for the purpose of investment are useless, and in view of the powers imposed by law upon the comptroller, and the customary method of handling such capital, are now obsolete. They should not be included in the appropriation acts.

General statutes have been passed from time to time directing the legislature to appropriate certain sums from the revenues of the common school fund, the literature fund and the United States deposit fund, and for specified objects.

By revised statutes, part one, chapter nine, title four, section two (R. S., 8th ed., p. 568), it was provided that one hundred thousand dollars should be annually distributed from the revenues of the common school fund, for the "support and encouragement of common schools" and "as often as such revenue shall be increased by the sum of ten thousand dollars such increase shall be added to the sum to be distributed."

Laws eighteen hundred and forty-seven, chapter eight, revised statutes, eighth edition, page five hundred and seventy, provides that one hundred and ten thousand dollars shall be appropriated from the revenue of the common school fund, one hundred and ten thousand dollars from the revenue of the United States deposit fund, and from the revenues of both such funds, fifty-five thousand dollars for district school libraries, school apparatus or teachers' wages, a total of two hundred and seventy-five thousand dollars. This act probably supersedes the section of the revised

statutes above referred to, and Laws of eighteen hundred and thirty-eight, chapter two hundred and thirty-seven, section two (R. S., 8th ed., p. 587).

By Laws of eighteen hundred and fifty-one, chapter five hundred and thirty-six, section two, it is provided that ten thousand dollars be paid annually from the income of the United States deposit fund for the support of the state normal school.

Laws of eighteen hundred and ninety-two, chapter three hundred and seventy-eight, section twenty-six (the University Law) contains a provision that the treasurer shall annually pay on the warrant of the comptroller thirty-four thousand dollars from the income of the United States deposit fund, and twelve thousand dollars from the income of the literature fund, for the benefit of the academies of the university of the state of New York, to be distributed by the regents thereof.

By Laws of eighteen hundred and ninety-four, chapter five hundred and thirty-six, title eleven, section one (the Consolidated School Law), thirty thousand dollars is to be annually appropriated from the income of the United States deposit fund for the instruction of common school teachers, to be distributed under the direction of the superintendent of public instruction.

These amounts, which by general statute are attempted to be made fixed charges upon the income of these three funds, including the twenty-five thousand dollars which is annually to be added to the capital of the common school fund from the revenue of the United States deposit fund, aggregate three hundred and eighty-six thousand dollars. As we have seen, the available income during the year ending September thirtieth, eighteen hundred and ninety-four, from these funds, amounted to two hundred and sixty-four thousand seven hundred and seventy-nine dollars and forty-two cents.

While these statutes may be legislative declarations of the settled policy of the state as to the disposition of the revenues of these funds, they should not be regarded as absolute, and, of course, are not binding upon future legislatures.

All these statutes, except L. 1892, ch. 378, § 26 and L. 1894, ch. 556, tit. XI, § 2, are to be repealed by this revision. By so doing it is not proposed to do away with the present method of disposing of the revenues of these funds, but the theory is that each legislature should, in its discretion, provide for the support of the educational system of the state without regard to the directions of prior legislatures. When these acts were passed the capital of these funds was invested at a higher rate of interest, since at that time the legal rate was higher. By the reduction in the rate of interest the productive power of these funds has been materially lessened.

By this proposed section we create a new fund to be known as the education fund, to be composed of what is now called the free school fund, that is, the fund raised by state tax for the support of the free common school system, and the revenues of the common school fund, the literature fund and the United States deposit fund, except the sum of twenty-five thousand dollars added each year to the capital of the common school fund. From the education fund is to be appropriated all moneys for the support of the free common school system, including the money paid to academies for teachers training classes, and for district libraries to be distributed under the direction of the superintendent of public instruction, and such moneys as are for the support of the university of the state, including the state library, apportionments to academies, and for all other purposes in the jurisdiction of the regents of the university, to be expended by them as provided by law.

This proposed scheme involves a transfer each year to the education fund of the net income of the common school, literature and United States deposit funds, and the raising by tax of such further amount as may be required for the maintenance of the state educational system. Under the present method, payments for educational purposes are made from the general fund, the free school fund, and the revenues of the common school, literature and United States deposit funds. All money expended for

the maintenance of the university of the state, and all the departments thereof, and all money appropriated to the use of the superintendent of public instruction in supporting the free common school system of the state, should properly be paid from a common fund.

The adoption of such a system would produce much less confusion; there would never be the necessity of providing for the deficiencies existing in the revenues of the common school, literature and United States deposit funds; transfers from the revenues of these funds to the educational fund might be made annually and all warrants for educational purposes drawn upon such fund. It would seem that thereby the method of book-keeping in the comptroller's office would be simplified.

The constitution, article nine, section three, provides that the revenue of the common school fund be applied to the support of the common schools and the revenue of the literature fund to the support of academies.

It would meet this constitutional requirement to appropriate respectively for these purposes from the proposed education fund, an amount equal to the revenues of such funds transferred to the education fund.】

§ 81. Investments.—The comptroller shall invest and keep invested all moneys belonging to the common school, literature and United States deposit funds in the stocks and bonds of the United States and of this state, or for the payment of which, the faith and credit of the United States or of this state are pledged, or in the stocks or bonds of any county, town, city, village or school district of the state authorized to be issued by law. The moneys belonging to the United States deposit funds now invested in mortgages in the several counties of the state, may continue to be so invested until such mortgages are paid or foreclosed, the amount received on such foreclosure or payment shall be paid into the state treasury to the credit of the United States deposit fund. The comptroller, whenever he deems it for the best interests of such funds, or either of them, may dispose of

any of the securities therein or investments thereof, in making other investments authorized by law, and he may exchange any such securities for those held in any other of such funds. The care and disposition of all lands belonging to the literature fund and the common school fund shall be vested in the commissioners of the land office.

[R. S., pt. I, ch. IX, tit. 4, §§ 4, 6; R. S., 8th ed., p. 568, L. 1840, ch. 294; R. S., 8th ed., p. 569, L. 1848, ch. 366; R. S., 8th ed., p. 616, L. 1887, ch. 245, as am. by L. 1888, ch. 464, and L. 1889, ch. 50; R. S., 8th ed., p. 616, consolidated without change of substance.]

§ 82. The United States deposit fund.—The part of the United States deposit fund received out of the surplus money of the treasury of the United States, under the seventeenth section of the act of congress, entitled “An act to regulate the deposits of the public money,” passed June twenty-third, eighteen hundred and thirty-six, is held by the state on the terms, conditions and provisions specified in such act of congress, and the faith of the state is inviolably pledged for the safe-keeping and repayment of all moneys thus received from time to time, whenever the same shall be required by the secretary of the treasury of the United States, under the provisions of such act. The comptroller and treasurer of the state shall keep the accounts of the moneys belonging to the United States deposit fund in the books of their respective offices, separate and distinct from the state funds, and in such manner as to show the amount of principal of the fund, the amount received from the interest, the amount paid from the annual revenue and the objects to which the same has been applied. If there shall be any loss in the loans of the moneys belonging to the United States deposit fund, it shall be a charge on the interest derived from the loan of such moneys, and none of the interest moneys shall be paid out for any purpose until such loss has been made good thereon.

[L. 1837, ch. 2; R. S., 8th ed., p. 572,
L. 1837, ch. 150; §§ 60, 63; R. S., 8th ed., p. 586,
consolidated without change in substance.

The following sections relating to the care and disposition of the United States deposit fund are particularly new; while the present loan commissioners are continued in office with many similar powers and duties, the power to loan money on mortgage is taken away. The money collected by them as payment of principal and interest and upon foreclosure is to be paid into the state treasury and treated the same as other state funds. These changes render useless a large portion of ch. 150 of the Laws of 1837, and its supplemental acts, and have made it possible to eliminate many of the cumbersome provisions of those acts.]

§ 83. Appointment and qualification of loan commissioners.—There shall continue to be two commissioners for loaning the moneys belonging to the United States deposit fund, in each county, where such moneys are now invested, who shall be known as loan commissioners. The term of office of each commissioner shall be two years. Such commissioners shall be appointed by the governor, with the advice and consent of the senate. Each commissioner shall reside in the county for which he is appointed and shall not be a supervisor. The office of such commissioners for each county shall be kept at the court-house of the county or at some convenient place near the same. The office of the commissioners appointed in the city and county of New York shall be at the office of the register of such city and county.

The comptroller may direct the commissioners to cancel and discharge any mortgage, on satisfactory proof that the moneys loaned and secured by such mortgage have been fully paid to either of the commissioners authorized to receive the same, if the mortgage remains uncanceled and undischarged of record. The commissioners in pursuance of the order and direction of the comptroller, shall cancel and discharge such mortgage.

[L. 1837, ch. 150, §§ 2, 5; R. S., 8th ed., p. 572,
L. 1838, ch. 38; R. S., 8th ed., p. 587,
L. 1868, ch. 698; R. S., 8th ed., p. 594,
without change in substance.]

§ 84. Powers of single commissioner; books and records.—If there is but one commissioner in a county, or but one able or qualified to act, he shall have all the powers of two commissioners of the county until his associate has been appointed and qualified or has become able to act. If the two commissioners of the county disagree with reference to any matter requiring their action, either may apply to the supreme court for direction in the premises, on notice of eight days to his associate, and any order which the court may make on such application shall be observed and complied with by such commissioners. The book or books of mortgages executed to the commissioners when not in use by them shall remain in the clerk's office of the county, and in the city and county of New York in the office of the register. The commissioners shall keep a record of their proceedings in a book to be kept for that purpose, which, when not in use by them, shall be deposited in the clerk's or register's office of the county. During office hours any person may search and examine any book required to be kept by this article.

[L. 1837, ch. 150, § 23, as am. by L. 1863, ch. 73, §§ 45, 55;
R. S., 8th ed., pp. 577, 583, 585.

That part of this section relating to the settlement of differences arising between two commissioners, is new.]

§ 85. Supervision of existing loan office mortgages. — Such commissioners in each county shall have charge of the mortgages heretofore executed to them or their predecessors in office, on lands in such county, which mortgages shall continue with the same force and effect as if this chapter were not enacted. The rate of interest in such mortgages shall be five per centum per annum.

Such commissioners shall collect and receive the interest arising on any such mortgage, and in case of failure to pay such

interest when due, may foreclose such mortgage in the name of the people of the state of New York, by such actions or proceedings as other mortgages may be foreclosed. Such commissioners shall receive payment of the principal or any part thereof of any such mortgage on lands within their respective counties when tendered, and shall satisfy and discharge the same by the execution and acknowledgment of a satisfaction piece in the usual form, which shall be recorded by the county clerk, who shall thereupon write upon the margin of such mortgage, in the book containing the same in his office, a statement to the effect that the same has been discharged and satisfied by such commissioners, giving the date thereof.

Such commissioners may allow any such mortgage to remain as a continuing security if all interest due thereon has been paid, and they are satisfied, on due inquiry, that the same is a first lien on the premises described therein, and that such premises are worth double the amount unpaid on the mortgage. If not so satisfied, they shall report the facts to the comptroller, and if directed so to do by him, they shall proceed to foreclose such mortgage and collect the principal and interest due thereon. Every such commissioner hereafter appointed, before entering on his official duties, shall execute to the people of the state of New York, an undertaking with two or more sufficient sureties, to be approved by the comptroller, in such sum as the comptroller directs, for the true and faithful performance of his duties, as such commissioner. No commissioner shall receive any moneys under the provisions of this article until such undertaking has been executed, approved and filed in the office of the comptroller. The comptroller may require additional security at any time, and, if the same is not given when required, shall report the fact with his reason for requiring additional security to the governor.

[L. 1837, ch. 150, §§ 4, 5, 22, 47, 50 ; R. S., 8th ed., p. 572.]

The loan commissioners still retain the power to collect and receive the principal and interest of mortgages when due, and to foreclose when necessary. The provisions of the statute, L.

1837, ch. 150, and supplemental acts relating to the loaning of money, issuing of mortgages, their form and all other matters relating hereto are repealed and not re-enacted.

The procedure for the foreclosure of loan office mortgages has been made to conform with that which prevails upon the foreclosure of ordinary mortgages. The form of bond prescribed in L. 1837, ch. 150, § 20, is omitted.】

§ 86. New accounts for parts of premises. — If the owner of mortgaged premises sell a part thereof, the commissioners on application and with the consent of the mortgagor and such owner shall open an account against the purchaser for his proportionate share of the moneys unpaid on the mortgage, but not for a less sum than one hundred dollars nor unless the part of the mortgaged premises remaining unsold, exclusive of buildings and prior liens, is worth double the residue of the mortgage debt not included in the new account. On full payment of the amount for which a separate account is opened, the commissioners shall discharge the part for which such account was opened by the execution of a release in the usual form, which, when acknowledged, shall be recorded by the county clerk and a minute thereof made upon the margin of the mortgage. Such discharge shall not affect or impair the obligation or liability of the mortgagor.

【L. 1847, ch. 476, §§ 1, 2, 3; R. S., 8th ed., p. 591, without change in substance.】

§ 87. Power of commissioners to maintain actions. — The commissioners may, at any time, before the sale of the mortgaged premises, bring an action in the name of the people to restrain the commission of waste by any person upon the mortgaged premises, or to correct any mistake or omission in the description thereof, or to recover the amount due on a mortgage. At any time after default, and before sale, if any person cuts or removes or injures the timber, fences, buildings or other fixtures, belonging to such mortgaged premises, or threatens so to do,

they may maintain a like action for damages or an injunction.

[L. 1837, ch. 150, §§ 33, 40 ; R. S., 8th ed., p. 582,
without change in substance.]

§ 88. Foreclosure and redemption of loan office mortgages.—If the interest due on any such mortgage shall not be paid on the first Tuesday of October of any year, or within twenty-three days thereafter, or the principal or any part thereof shall not be paid when due, the state shall be seized of an absolute estate in fee, in such lands, and the mortgagor, his heirs and assigns, shall be foreclosed and barred of all equity of redemption of the mortgaged premises ; but shall be entitled to retain possession thereof, until sale under foreclosure, as herein provided ; and shall, at any time before the purchaser at such sale receives his evidences of title on the foreclosure, be entitled to redeem the same by paying to the commissioners the principal unpaid on the mortgage and the interest to the time of redemption, and all the costs and expenses of the foreclosure and sale. On such redemption, the title to the mortgaged premises shall revert to and be vested in the mortgagor, his heirs or assigns. If, before redemption, the purchaser pays to the commissioners, the purchase money, or part thereof, the amount so paid shall be repaid to him.

[L. 1837, ch. 150, §§ 27, 30 ; R. S., 8th ed., p. 578,
L. 1880, ch. 517, as am. by
L. 1891, ch. 181 ; R. S., 8th ed., p. 595.

This section is a re-enactment of that part of the law relating to foreclosure and the equity of redemption.]

§ 89. Purchases for the state.—If, on any such foreclosure, the property does not bring a sum sufficient to pay in full the amount of principal and interest unpaid on such mortgage, and the costs and expenses of the sale, the commissioners shall bid in the mortgaged property for the people of the state, and take title thereto in the name of the state, and transmit the evidence of title to the comptroller, and thereafter such property shall belong to the

state and form a part of the United States deposit fund. The commissioners, under the direction of the commissioners of the land office, shall continue to exercise supervision and care over such property until it is disposed of according to law, and may include the original amount loaned on the mortgage in the sum on which their commissions are estimated. In all such cases the commissioners, under the direction of the comptroller, shall sue for and collect any deficiency from any person liable to pay the same, and such sale and the purchase of the lands by the people shall not be a defense to the action or any part thereof. The commissioners shall be allowed by the comptroller the taxable costs and disbursements incurred in any action or proceeding for the foreclosure of any such mortgage, when the real property is bid in or conveyed to the state under this section, and any reasonable expenses incurred by them in such action to be fixed and approved by the comptroller; and any recovery which may be had against them in any action or proceeding where the comptroller is satisfied that such recovery was not had in consequence of any default or misconduct on their part, with their costs and expenses in such action or proceeding; and the amount of such costs, disbursements and expenses, when so fixed and approved, may be retained out of any moneys in the hands of the commissioners received by them under this article, or may be paid by the comptroller out of the revenues of the United States deposit fund. No commissioners shall be directly or indirectly interested in the purchase of any mortgaged premises; if so interested such sale shall be void.

[L. 1837, ch. 150, §§ 8, 15, 33; as am. by L. 1878, ch. 223; R. S., 8th ed., p. 576,

L. 1844, ch. 236, § 4; R. S., 8th ed., p. 590,

L. 1863, ch 73, § 3; R. S., 8th ed., p. 593.

The sections relating to the appraisement of mortgaged premises and the bidding in by the state at the appraised value have been omitted. The mortgagor is not, in this section, credited upon his mortgage debt with the appraised value, as formerly, but the commissioners may sue for and collect the mortgage debt as if there had been no purchase by the state. The amount of

the fees were hitherto regulated by statute; this section prescribes that the disbursements, costs and expenses shall be fixed and approved by the comptroller.]

§ 90. Report to comptroller.—Such commissioners, annually, in the month of January, shall make a report to the comptroller, showing all their transactions under this article to the close of the calendar year then ending. Such report shall contain:

1. A statement of the mortgages outstanding in the county, with the names of the mortgagors, the dates of the mortgages, the amounts paid thereon, both principal and interest, the amount of property on which each is a lien and the estimated cash market value of such property.

2. The amount of interest received during such year, from whom received and on what mortgages, the names of the mortgagors and the number of each mortgage.

3. The amount of principal received during such year, from whom received, and on what mortgage, giving the name of the mortgagor and the number of each mortgage.

4. The amount retained for compensation.

5. A statement of all moneys retained for the costs, disbursements and expenses of foreclosures.

6. All other matters deemed material for the information of the comptroller, or required by him.

The comptroller may prescribe the form of such report, and may require a special report to be made at any time in regard to any matter under this article. At the time of making the annual report and during the month of January in each year such commissioners shall pay into the state treasury the amount of moneys in their hands as shown by such report, and all moneys received and collected by them under this article, less the amount which they are entitled to retain for their compensation, cost, disbursements and expenses. At any time within one year from the rendition of such report, the comptroller, if dissatisfied with the same, may audit and adjust the account of any such commissioner for the moneys received, paid out or retained by him under

this article, and fix and determine the amount due the state on account thereof, and make a certificate to that effect, which shall be presumptive evidence of the amount due the state in any action or proceeding against such commissioner or the sureties on his undertaking.

【L. 1837, ch. 150, § 16; R. S., 8th ed., p. 576.

This section is mostly new. The law now provides for an annual report to the comptroller, but does not specifically state its contents.】

§ 91. Certified copy of original mortgage.—On the application of any person interested, the comptroller shall furnish a certified copy of any original mortgage which has been delivered to him pursuant to law, and the same may be recorded in the office of the clerk of the county where the mortgaged premises are situated.

【L. 1844, ch. 326, § 2 in part; R. S., 8th ed., p. 590,
without change of substance.】

§ 92. Fees of loan commissioners.—The loan commissioners in each county may retain annually, as full compensation for their services under this article, three-fourths of one per centum on twenty-five thousand dollars or a less sum, committed to their charge during the preceding year, and one-half of one per centum on all sums over twenty-five thousand dollars, unless the whole amount exceeds fifty thousand dollars, in which case they may retain but one-half of one per centum on the whole sum; and in the city and county of New York, where they may retain but one-fourth of one per centum on the amount in excess of fifty thousand dollars, which compensation shall be retained out of the interest moneys collected and received.

【L. 1837, ch. 150 § 18; as am, by L. 1841, ch. 181; R. S., 8th ed., p. 576,
without change of substance.】

§ 93. Payments to Cornell university on account of the college land scrip fund.—The acceptance by this state of the provisions of an act of the congress of the United States, approved July second, eighteen hundred and sixty-two, entitled “An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts,” and which acceptance is contained in chapter twenty of the laws of eighteen hundred and sixty-three, is continued in force, notwithstanding the repeal thereof by this chapter.

The money raised under chapter seventy-eight of the laws of eighteen hundred and ninety-five, by the sale or conversion into cash of the securities in which were invested the proceeds of the sales of lands and land scrip, formerly constituting the college land scrip fund, together with the money paid into the state treasury from the sale of lands or land scrip belonging to such fund, is held by the state as a part of the general fund for the benefit and use of Cornell university.

Five per centum of the amount of the proceeds so transferred to the general fund shall annually be paid to the Cornell university, pursuant to a certificate issued by the comptroller to such university, by virtue of chapter seventy-eight of the laws of eighteen hundred and ninety-five, which certificate is hereby ratified and confirmed.

Certificates shall also be issued by the state to such university from time to time, as the proceeds of the sales of the lands and land scrip are paid into the treasury, for the payment annually of five per centum upon such proceeds from the date of their receipt upon the same conditions as the original certificate.

The comptroller in his annual estimate of the appropriations required for the expenses of the government shall include the amount required to pay the interest on these certificates.

[L. 1863, ch. 20; R. S., 8th. ed., p. 596,

L. 1863, ch. 460; R. S., 8th. ed., p. 596,

L. 1895, ch. 78, amending § 4, repealing § 7 of the latter act.

By the amendatory act the comptroller was directed to convert into cash, before October 1, 1895, all the securities belonging to the college land scrip fund, and on that day to transfer it to the general fund, to be deemed, thereafter, a part of such fund. The comptroller was required to issue certificates binding the state to pay five per centum interest on the amount transferred to the general fund and paid into such fund from time to time as a result of the sale of lands and land scrip, to Cornell university, so long as it shall comply with the provisions of the act of congress donating the public lands to this State.

The effect of this amendment is to do away with the college land scrip fund, and transfer all parts thereof to the general fund.】

ARTICLE V.

Miscellaneous Funds.

Section 100. The military record fund.

101. The mariners' fund.

102. Payments on account of chancery fund.

§ 100. The military record fund.—All moneys contributed and paid over to the treasurer of the state by towns, cities and individuals for the erection of a hall of military record belong to the military record fund. Such fund shall be invested in the same manner as other state funds and a separate account thereof shall be kept by the state treasurer. The interest arising from the investment of such fund shall be used in the maintenance of such quarters in the state capitol as shall be set apart for the safe keeping of military records, books and property, and for the display of colors, standards, battle flags and relics, which is known as the hall of military record.

【L. 1865, ch. 744; R. S., 8th ed., p. 871.

L. 1866, ch. 610; R. S., 8th ed., p. 873,

L. 1878, ch. 369; R. S., 8th ed., p. 874.

All these laws have been repealed and partly re-enacted in the Military Code, § 42. It seems proper, however, to designate the military record fund among the state funds in the State Finance Law.】

§ 101. The mariners' fund.—The loan of ten thousand dollars made by the comptroller to the trustees of the American Seamen's Friend Society in the city of New York, pursuant to chapter one hundred and seventy-three of the laws of eighteen hundred and forty, and continued by chapter thirty-seven of the laws of eighteen hundred and forty-five, shall constitute the mariners' fund. Such loan shall be secured by mortgage satisfactory to the comptroller and may be retained by such trustees, without payment of interest, as long as they shall faithfully use and apply the same to promote the benevolent objects of the sailors' home, erected for the boarding and accommodation of seamen in such city.

The trustees of such institution may mortgage the sailors' home for a term not less than seven years to secure the debts due from, or money loaned to, them for the lawful purpose of such institution, to an amount not exceeding fifteen thousand dollars. Such mortgage shall be a lien on such home prior to the lien held by the state to secure the loan mentioned in this section, provided all other liens and incumbrances on such home be discharged and canceled of record.

No sale of such sailors' home upon the foreclosure of any mortgage prior to the lien of the state shall be had without, at least, six weeks' previous notice of such sale served personally upon the comptroller.

[L. 1845, ch. 37; R. S., 8th ed., p. 605,
without change in substance.]

§ 102. Payments on account of chancery fund.—All moneys, securities and real estate formerly under the control and in possession of the court of chancery, and transferred to the comptroller by the clerk of the court of appeals, pursuant to chapter one hundred and thirty-five of the laws of eighteen hundred and ninety-four, is credited to the general fund and is a part thereof.

A person claiming any portion of such property, shall apply to a court of competent jurisdiction after due notice to the comptroller of the time and place of making such application, for an order

directing the payment of such portion to him. Upon such order and the warrant of the comptroller the treasurer shall pay such portion to him.

[L. 1894, ch. 135; L. 1894, ch. 678, and L. 1895, ch. 816.

The first of these acts transferred the chancery funds to the comptroller, the second act provided that the income of such fund should be paid for the support of certain law libraries, the last act transferred this fund as a whole to the general fund and made a charge thereupon all claims against the chancery fund which might be proved. This last act practically supersedes L. 1894, ch. 678, providing for the disposition of the income of this fund.]

ARTICLE VI.

§ 110. Laws repealed.—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 111. When to take effect.—This chapter shall take effect on October first, eighteen hundred and ninety-six.

SCHEDULE OF LAWS REPEALED.

| | | |
|----------------------|--|------|
| Revised Statutes.... | Part I, ch. VIII, title 3, articles 1, 2, 3..... | All. |
| Revised Statutes.... | Part I, ch. VIII, title 4..... | All. |
| Revised Statutes.... | Part I, ch. IX, titles 2, 3, 4 and 6. | All. |

| Laws of— | Chapter. | Sections. |
|-----------|----------|-----------|
| 1830..... | 184..... | All. |
| 1830..... | 242..... | All. |
| 1831..... | 102..... | All. |
| 1831..... | 286..... | All. |
| 1831..... | 320..... | All. |
| 1832..... | 8..... | 1, 2. |
| 1832..... | 296..... | All. |
| 1833..... | 56..... | All. |
| 1834..... | 284..... | All. |
| 1835..... | 260..... | All. |

| Laws of— | Chapter. | Sections. |
|-----------|----------|------------------|
| 1836..... | 356..... | All. |
| 1837..... | 2..... | All. |
| 1837..... | 150..... | All except § 43. |
| 1837..... | 360..... | All. |
| 1838..... | 58..... | All. |
| 1838..... | 193..... | All. |
| 1838..... | 237..... | All. |
| 1839..... | 381..... | All. |
| 1840..... | 288..... | All. |
| 1840..... | 294..... | All. |
| 1841..... | 264..... | All. |
| 1842..... | 310..... | All. |
| 1843..... | 44..... | All. |
| 1843..... | 179..... | All. |
| 1844..... | 326..... | All. |
| 1845..... | 37..... | All. |
| 1845..... | 267..... | All. |
| 1847..... | 8..... | All. |
| 1847..... | 258..... | All. |
| 1847..... | 476..... | All. |
| 1848..... | 162..... | All. |
| 1848..... | 215..... | All. |
| 1848..... | 366..... | All. |
| 1849..... | 228..... | All. |
| 1849..... | 230..... | All. |
| 1849..... | 301..... | All. |
| 1849..... | 382..... | 13. |
| 1850..... | 337..... | All. |
| 1851..... | 286..... | All. |
| 1851..... | 536..... | All. |
| 1852..... | 235..... | All. |
| 1852..... | 370..... | All. |
| 1853..... | 36..... | All. |
| 1855..... | 535..... | 3. |
| 1857..... | 721..... | All. |

| Laws of— | Chapter. | Sections. |
|-----------|----------|-----------------|
| 1857..... | 783..... | All. |
| 1861..... | 177..... | All. |
| 1863..... | 20..... | All. |
| 1863..... | 731..... | All except § 9. |
| 1863..... | 460..... | All. |
| 1864..... | 229..... | All. |
| 1864..... | 553..... | All. |
| 1868..... | 698..... | All. |
| 1872..... | 115..... | All. |
| 1877..... | 245..... | All. |
| 1878..... | 233..... | All. |
| 1878..... | 291..... | All. |
| 1880..... | 100..... | All. |
| 1880..... | 517..... | All. |
| 1884..... | 412..... | 2, 3. |
| 1887..... | 245..... | All. |
| 1888..... | 326..... | All. |
| 1888..... | 464..... | All. |
| 1889..... | 50..... | All. |
| 1889..... | 136..... | All. |
| 1891..... | 181..... | All. |
| 1893..... | 672..... | All. |
| 1894..... | 135..... | All. |
| 1894..... | 678..... | All. |
| 1895..... | 78..... | All. |
| 1895..... | 818..... | All. |

TABLE SHOWING DISPOSITION OF LAWS REPEALED.

| Revised Statutes. | Sections. | Page. | Disposition. |
|------------------------|-------------------|-------|------------------------|
| Pt. I, ch. 8, tit. 3.. | 1, subs. 1-7, 9.. | 505.. | Revision, § 4. |
| Pt. I, ch. 8, tit. 3.. | sub. 8 | 505.. | Revision, § 22. |
| Pt. I, ch. 8, tit. 3.. | 2, 3..... | 506.. | Revision, § 22. |
| Pt. I, ch. 8, tit. 3.. | 4, 8..... | 506.. | Revision, § 5. |
| Pt. I, ch. 8, tit. 3.. | 9 | 506.. | Revision, § 7. |
| Pt. I, ch. 8, tit. 3.. | 10..... | 506.. | Obsolete. |
| Pt. I, ch. 8, tit. 3.. | 11, 12..... | 506.. | Revision, § 15. |
| Pt. I, ch. 8, tit. 3.. | 13..... | 507.. | Revision, § 4. |
| Pt. I, ch. 8, tit. 3.. | 14..... | 507.. | Obsolete. |
| Pt. I, ch. 8, tit. 3.. | 15..... | 507.. | Revision, § 14. |
| Pt. I, ch. 8, tit. 3.. | 16, 17..... | 507.. | Revision, § 6. |
| Pt. I, ch. 8, tit. 3.. | 18..... | 507.. | Executive L., § 31. |
| Pt. I, ch. 8, tit. 3.. | 19-22..... | 514.. | Revision, § 22. |
| Pt. I, ch. 8, tit. 3.. | 23-25..... | 514.. | Revision, § 23. |
| Pt. I, ch. 8, tit. 3.. | 26-29..... | 515.. | Revision, § 24. |
| Pt. I, ch. 8, tit. 3.. | 30, 31..... | 515.. | Revision, § 25. |
| Pt. I, ch. 8, tit. 3.. | 32..... | 516.. | Revision, § 26. |
| Pt. I, ch. 8, tit. 3.. | 33-35..... | 516.. | Revision, § 31. |
| Pt. I, ch. 8, tit. 3.. | 36-39..... | 516.. | Revision, § 32. |
| Pt. I, ch. 8, tit. 3.. | 40..... | 517.. | Revision, §§ 31, 32. |
| Pt. I, ch. 8, tit. 3.. | 41..... | 517.. | Revision, § 35. |
| Pt. I, ch. 8, tit. 4.. | 1..... | 518.. | Revision, § 3. |
| Pt. I, ch. 8, tit. 4.. | 2, 4..... | 518.. | Executive L., § 41. |
| Pt. I, ch. 8, tit. 4.. | 5, 6..... | 518.. | Revision, § 3. |
| Pt. I, ch. 8, tit. 4.. | 7..... | 519.. | Revision, § 8. |
| Pt. I, ch. 8, tit. 4.. | 8, 9..... | 519.. | Obsolete. |
| Pt. I, ch. 8, tit. 4.. | 10-13..... | 519.. | Revision, § 8. |
| Pt. I, ch. 9, tit. 2.. | 1..... | 563.. | Revision, § 60. |
| Pt. I, ch. 9, tit. 2.. | 2, 3..... | 564.. | Obsolete. |
| Pt. I, ch. 9, tit. 2.. | 4..... | 564.. | Revision, § 61. |
| Pt. I, ch. 9, tit. 2.. | 5..... | 564.. | Revision, §§ 61, 66. |
| Pt. I, ch. 9, tit. 2.. | 6-9..... | 564.. | Obsolete. |
| Pt. I, ch. 9, tit. 2.. | 10-12..... | 565.. | Repealed by Canal Law. |
| Pt. I, ch. 9, tit. 3.. | 1..... | 567.. | Obsolete. |

| Revised Statutes. | Sections. | Page. | Disposition. |
|------------------------|------------|-------|--|
| Pt. I, ch. 9, tit. 3.. | 2..... | 567.. | Revision, § 81. |
| Pt. I, ch. 9, tit. 4.. | 1..... | 568.. | Revision, § 80, Const., art. 9, § 3. |
| Pt. I, ch. 9, tit. 4.. | 2, 3..... | 568.. | Not to be re-enacted. See Revision, § 80. |
| Pt. I, ch. 9, tit. 4.. | 4..... | 568.. | Revision, § 81. |
| Pt. I, ch. 9, tit. 4.. | 5..... | 568.. | Obsolete. |
| Pt. I, ch. 9, tit. 4.. | 6..... | 568.. | Revision, § 81. |
| Pt. I, ch. 9, tit. 6.. | 1-3..... | 651.. | Revision, § 27. |
| Pt. I, ch. 9, tit. 6.. | 4-8..... | 652.. | Revision, § 28. |
| Pt. I, ch. 9, tit. 6.. | 9..... | 652.. | Revision, § 28. |
| Pt. I, ch. 9, tit. 6.. | 10..... | 652.. | Obsolete. |
| Pt. I, ch. 9, tit. 6.. | 11..... | 652.. | Revision, § 29. |
| Pt. I, ch. 9, tit. 6.. | 12-16..... | 652.. | Not to be re-enacted. The right of redemp- tion is not to be pre- served. |
| Pt. I, ch. 9, tit. 6.. | 17..... | 653.. | Revision, § 29. |
| Pt. I, ch. 9, tit. 6.. | 18-20..... | 653.. | Not to be re-enacted. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|-----------|-----------------------|----------------------------|
| 1830.... | 184..... | All..... | 606.... | Temporary. Obsolete. |
| 1830.... | 242..... | All..... | 607.... | Revision, § 64. |
| 1831.... | 102..... | All..... | 654.... | Revision, § 27. |
| 1831.... | 286..... | All..... | 566.... | Revision, § 62. |
| 1831.... | 320..... | 1-15 | 607.... | Obsolete. |
| 1831.... | 320..... | 16..... | 609.... | Executive L., § 32. |
| 1831.... | 320..... | 18..... | 609.... | Revision, § 4, sub. 6. |
| 1831.... | 320..... | 19..... | 609.... | Executive L., § 30. |
| 1831.... | 320..... | 20..... | 609.... | Executive L., § 40. |
| 1831.... | 320..... | 21..... | 609.... | Executive L., § 42. |
| 1831.... | 320..... | 22..... | 609.... | County L., § 230. |
| 1831.... | 320..... | 23..... | 610.... | Superseded by Indian L. |
| 1831.... | 320..... | 24-26.... | 610.... | Revision, § 2. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|------------|-----------------------|---|
| 1831.... | 320..... | 27, 28... | 610.... | Obsolete. |
| 1832.... | 8..... | 1, 2..... | 1243... | Obsolete. |
| 1832.... | 296..... | All..... | 610.... | Obsolete. |
| 1833.... | 56..... | 4..... | 508.... | Revision, § 6. |
| 1833.... | 56..... | 5..... | 508.... | See Code Civ. Pro., § 933. |
| 1835.... | 260..... | All..... | 611.... | Obsolete. |
| 1836.... | 356..... | All..... | 612.... | Obsolete. |
| 1837.... | 2..... | 1..... | 572.... | Revision, § 83. |
| 1837.... | 2..... | 2-4 | 572.... | Obsolete. |
| 1837.... | 150..... | 1..... | 572.... | Revision, § 83. |
| 1837.... | 150..... | 6..... | 573.... | Revision, § 88. |
| 1837.... | 150..... | 2..... | 573.... | Revision, § 84. |
| 1837.... | 150..... | 3, 4..... | 573.... | Revision, § 86, Pub. Off. L., § 10. |
| 1837.... | 150..... | 5..... | 573.... | Revision, § 84. |
| 1837.... | 150..... | 6..... | 573.... | Revision, § 88. |
| 1837.... | 150..... | 7..... | 573.... | Code Civ. Pro., § 755. |
| 1837.... | 150..... | 8..... | 573.... | Revision, § 90. |
| 1837.... | 150..... | 9-11 | 573.... | Omitted. Commissioners' power to loan moneys is taken away. |
| 1837.... | 150..... | 12..... | 375.... | Revision, § 86. Partly obsolete. |
| 1837.... | 150..... | 13, 14... | 575.... | Revision, § 86, Pub. Off. L., §§ 23, 24. |
| 1837.... | 150..... | 15..... | 576.... | Revision, § 90. |
| 1837.... | 150..... | 16..... | 576.... | Revision, § 91. |
| 1837.... | 150..... | 17..... | 576.... | Not to be re-enacted. |
| 1837.... | 150..... | 18..... | 576.... | Revision, § 93. |
| 1837.... | 150..... | 19..... | 576.... | Obsolete, not to be re-enacted. |
| 1837.... | 150..... | 20..... | 577.... | Revision, § 86, Pub. Off. L., § 11. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|-----------|-----------------------|---|
| 1837.... | 150..... | 21-28 ... | 577-8 .. | Not to be re-enacted. Commissioners' power to loan is taken away. |
| 1837.... | 150..... | 29..... | 578.... | Revision, § 85. Not to be re-enacted, in terms. |
| 1837.... | 150..... | 30..... | 579.... | Revision, § 89. |
| 1837.... | 150..... | 31, 32... | 579.... | Not to be re-enacted. The foreclosure of loan office mortgages is made to conform with that of ordinary mortgages. |
| 1837.... | 150..... | 33..... | 580.... | Revision, § 90, in part. |
| 1837.... | 150..... | 34-38.... | 581.... | Not to be re-enacted. |
| 1837.... | 150..... | 39..... | 581.... | Not to be re-enacted. |
| 1837.... | 150..... | 40..... | 582.... | Revision, § 88, in part. |
| 1837.... | 150..... | 41..... | 582.... | Revision, § 84, in part. |
| 1837.... | 150..... | 43..... | 582.... | Revision, § 85, in part. |
| 1837.... | 150..... | 44-45.... | 583.... | Not to be re-enacted. |
| 1837.... | 150..... | 46..... | 583.... | Revision, § 85. |
| 1837.... | 150..... | 47..... | 583.... | Revision, § 86. |
| 1837.... | 150..... | 48, 49... | 583.... | Not to be re-enacted. |
| 1837.... | 150..... | 50-53.... | 584.... | Not to be re-enacted. The commissioners having no power to loan, these sections are unnecessary. |
| 1837.... | 150..... | 55..... | 585.... | Revision, § 85. |
| 1837.... | 150..... | 56, 57... | 585.... | Not to be re-enacted. |
| 1837.... | 150..... | 58..... | 586.... | Revision, § 86. |
| 1837.... | 150..... | 59-63.... | 587.... | Revision, § 83. |
| 1837.... | 150..... | 64, 65... | 587.... | Not to be re-enacted. |
| 1837.... | 360..... | All..... | 612.... | Obsolete. |
| 1838.... | 58..... | All..... | 587.... | Revision, § 84. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|-----------|-----------------------|--|
| 1838.... | 193..... | All..... | 575.... | Amends L. 1837, ch. 150, § 12. |
| 1838.... | 237..... | 1, 2..... | 587.... | Town Law, § 50; Revision, § 80. |
| 1838.... | 237..... | 3..... | 588.... | Obsolete. |
| 1838.... | 237..... | 4..... | 588.... | Repealed by L. 1892, ch. 573. |
| 1838.... | 237..... | 5, 7..... | 588.... | Obsolete. |
| 1838.... | 237..... | 8, 9..... | 588.... | Repealed by L. 1892, ch. 378. See § 26 thereof. |
| 1838.... | 237..... | 10..... | 589.... | Revision, § 80. |
| 1838.... | 237..... | 11-13.... | 589.... | Obsolete. |
| 1839.... | 381..... | 1..... | 654.... | Revision, § 30. |
| 1840.... | 288..... | All..... | 612.... | Obsolete, temporary, not to be re-enacted. Contrary to the method now pursued in comptroller's office. |
| 1841.... | 264..... | All..... | 589.... | Obsolete. |
| 1842.... | 310..... | 1..... | 532.... | Last sentence obsolete; Revision, § 17. |
| 1843.... | 44..... | 1, 2..... | 508.... | Revision, § 13. |
| 1843.... | 179..... | 1..... | 508.... | Revision, § 14. |
| 1844.... | 326..... | 1..... | 590.... | Obsolete. |
| 1844.... | 326..... | 2..... | 590.... | See Code Civ. Pro., § 933; Revision, § 92. |
| 1844.... | 326..... | 3..... | 590.... | Code Civ. Pro., § 933. |
| 1844.... | 326..... | 4..... | 590.... | Revision, § 90. |
| 1845.... | 37..... | All..... | 605.... | Revision, § 101. |
| 1845.... | 267..... | 1..... | 590.... | Not to be re-enacted. By revision commissioners have no power to loan moneys. |
| 1847.... | 8..... | 1..... | 570.... | Revision, § 80. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|-----------|-----------------------|---|
| 1847.... | 258..... | 1-4..... | 615.... | Temporary. |
| 1847.... | 258..... | 5..... | 615.... | Revision, § 80. |
| 1847.... | 258..... | 6..... | 615.... | Temporary. |
| 1847.... | 258..... | 7..... | 570.... | Revision, § 80. |
| 1847.... | 476..... | 1-3..... | 591.... | Revision, § 87. |
| 1847.... | 476..... | 4, 5..... | 591.... | Not to be re-enacted. |
| 1848.... | 162..... | All..... | 510.... | Obsolete. |
| 1848.... | 215..... | All..... | 566.... | Obsolete. |
| 1848.... | 366..... | 1, 2..... | 615.... | Temporary, obsolete. |
| 1848.... | 366..... | 3..... | 615.... | Revision, § 81. |
| 1849.... | 228..... | All..... | 616.... | Not to be re-enacted. Obsolete. |
| 1849.... | 230..... | All..... | 566.... | Amends L. 1848, ch. 215, § 1. |
| 1849.... | 301..... | 1-7..... | 570.... | Temporary. |
| 1849.... | 301..... | 8..... | 570.... | Revision, § 80. |
| 1849.... | 382..... | 13..... | 570.... | Revision, § 80. |
| 1850.... | 337..... | All..... | 591.... | Temporary. Obsolete. |
| 1851.... | 286..... | 1..... | 593.... | Revision, § 85. |
| 1851.... | 286..... | 2..... | 593.... | Revision, § 84. |
| 1851.... | 286..... | 3..... | 593.... | Obsolete. |
| 1851.... | 536..... | 1..... | 570.... | Repealed by L. 1892, ch. 378. See § 26 thereof. |
| 1851.... | 536..... | 2..... | 571.... | Revision, § 80. |
| 1851.... | 536..... | 3..... | 571.... | Repealed by L. 1892, ch. 378. |
| 1851.... | 536..... | 4, 5..... | 571.... | Revision, § 80. |
| 1852.... | 235..... | All..... | 571.... | Amends L. 1851, ch. 536, § 4. |
| 1852.... | 370..... | All..... | 566.... | Amends L. 1831, ch. 286. |
| 1853.... | 36..... | All..... | 567.... | Obsolete. |
| 1855.... | 535..... | All..... | 532.... | Amends L. 1842, ch. 310, § 1. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|----------|-----------------------|--|
| 1857.... | 721..... | All..... | 616.... | Revision, § 16. |
| 1857.... | 783..... | All..... | 512.... | Obsolete. Office of canal auditor abol- ished. |
| 1861.... | 177..... | All..... | 512.... | Obsolete. |
| 1863.... | 20..... | All..... | 596.... | Temporary in effect. |
| 1863.... | 73..... | 1..... | 593.... | Amends L. 1837, ch. 150 § 31. |
| 1863.... | 73..... | 2..... | 593.... | Amends L. 1837, ch. 150, § 32. |
| 1863.... | 73..... | 3..... | 593.... | Amends L. 1837, ch. 150, § 32. |
| 1863.... | 73..... | 4..... | 593.... | Amends L. 1837, ch. 150, § 15. |
| 1863.... | 73..... | 5..... | 593.... | Amends L. 1837, ch. 150, § 19. |
| 1863.... | 73..... | 6..... | 593.... | Amends L. 1837, ch. 150, § 23. |
| 1863.... | 73..... | 7..... | 593.... | Amends L. 1837, ch. 150, § 33. |
| 1863.... | 73..... | 8..... | 593.... | Amends L. 1837, ch. 150, § 39. |
| 1863.... | 73..... | 9..... | 593.... | Not to be repealed. |
| 1863.... | 460..... | 1-3..... | 596.... | Omitted as temporary. |
| 1863.... | 460..... | 4-6..... | 596.... | Revision, § 93. |
| 1863.... | 460..... | 7..... | 597.... | Repealed by L. 1895, ch. 78. |
| 1864.... | 229..... | All..... | 596.... | Amends L. 1863, ch. 460, § 3. |
| 1864.... | 553..... | All..... | 594.... | Obsolete. |
| 1868.... | 698..... | All..... | 594.... | Revision, § 83. |
| 1872.... | 115..... | 4..... | 513.... | Revision, § 4. Re- mainder of act tempo- rary. |
| 1877.... | 245..... | All..... | 1585.... | Revision, § 9. |

| Laws of. | Chapter. | Section. | R. S. 8th edition. | Disposition. |
|----------|----------|----------|-----------------------|---|
| 1878.... | 233..... | All..... | 580.... | Amends L. 1837, ch. 150, § 33. |
| 1878.... | 291..... | All..... | 509.... | Revision, § 36. |
| 1880.... | 100..... | All..... | 509.... | Revision, § 15. |
| 1880.... | 517..... | 1..... | 595.... | Revision, § 86. |
| 1880.... | 517..... | 2..... | 595.... | Amends L. 1837, ch. 150, § 18. |
| 1884.... | 412..... | 2..... | 595.... | Revision, § 81. |
| 1884.... | 412..... | 3..... | 595.... | Obsolete. |
| 1887.... | 245..... | 1..... | 616.... | Revision, § 81. Last clause in rev., § 61. |
| 1888.... | 326..... | All..... | 535.... | Revision, § 10. |
| 1888.... | 464..... | All..... | 616.... | Amends L. 1887, ch. 245. |
| 1889.... | 50..... | All..... | 616.... | Amends L. 1887, ch. 245. |
| 1889.... | 136..... | All..... | 3356... | Temporary. |
| 1891.... | 181..... | 1..... | 3197... | Amends L. 1880, ch. 517, § 1. |
| 1893.... | 672..... | All..... | ..... | Amends L. 1837, ch. 150, § 43. |
| 1894.... | 135..... | All..... | ..... | Revision, § 102. |
| 1894.... | 678..... | All..... | | Amends L. 1894, ch. 135. |
| 1895.... | 78..... | All..... | | Amends L. 1863, ch. 460, § 4. |
| 1895.... | 818..... | All..... | | Revision, § 102. |



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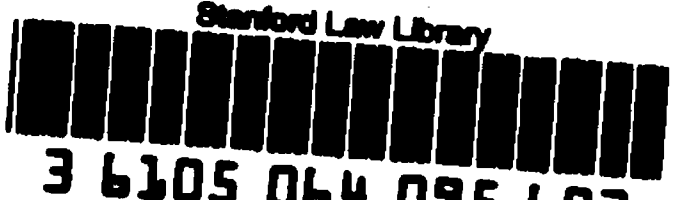
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